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CODE OF FEDERAL REGULATIONS

Title 7
Agriculture

Parts 1200 to 1599

Revised as of January 1, 2024

Containing a codification of documents
of general applicability and future effect

As of January 1, 2024

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Cite this Code: CFR

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

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

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

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

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

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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2024

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: Parts 1–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1599, 1600–1759, 1760–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2024.

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

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199.

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen Frattini.

Title 7—Agriculture

(This book contains parts 1200 to 1599)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE (CONTINUED)

Part

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AUTHORITY: 7 U.S.C. 2101–2119, 2611–2627, 2701–2718, 2901–2911, 4501–4514, 4801–4819, 4901–4916, 6101–6112, 6301–6311, 6401–6417, 7411–7425, 7481–7491, and 7801–7813.

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

AUTHORITY: 7 U.S.C. 2103, 2614, 2704, and 4804.

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

§ 1200.1 Words in the singular form.

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

§ 1200.2 Definitions.

(a) The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; and the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(b) *Board* means the board or council established by the order to administer the program.

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

(d) FEDERAL REGISTER means the publication provided for by the FEDERAL REGISTER Act, approved July 26, 1935 [44 U.S.C. 1501–1511], and acts supplementing and amending it.

(e) *Hearing* means that part of the proceeding which involves the submission of evidence.

(f) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

(g) *Hearing* means that part of the proceeding that involves the submission of evidence.

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

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

(j) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

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

[67 FR 44350, July 2, 2002, as amended at 82 FR 58098, Dec. 11, 2017]

§ 1200.3 Proposals.

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

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

§ 1200.4 Reimbursement of Secretary's expenses.

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

§ 1200.5 Institution of proceedings.

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

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

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

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

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

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

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

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

§ 1200.6 Docket number.

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

§ 1200.7 Judge.

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

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

(1) Rule upon motions and requests;

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

(3) Administer oaths and affirmations and take affidavits;

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

(5) Admit or exclude evidence;

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

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

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

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

§ 1200.8 Motions and requests.

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

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

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

§ 1200.9 Conduct of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1200.10 Oral and written arguments.

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

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

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

§1200.11 Certification of the transcript.

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

§1200.12 Copies of the transcript.

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

(b) Transcripts of hearings shall be made available to any person at actual cost of duplication.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

§1200.13 Administrator's recommended decision.

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

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

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

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

§ 1200.14 Submission to Secretary.

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

§ 1200.15 Decision by the Secretary.

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

§ 1200.16 Execution of the order.

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

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

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

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

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

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

the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time.* Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: *Provided,* That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

§ 1200.18 Ex parte communications.

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

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

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

(1) All such written communications;

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

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

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

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

§ 1200.19 Additional documents to be filed with hearing clerk.

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

§ 1200.20 Hearing before Secretary.

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

event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted from Research, Promotion and Information Programs

AUTHORITY: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6008, 6106, 6306, 6410, 6807, 7106, 7418, 7486, and 7806.

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

§ 1200.50 Words in the singular form.

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

§ 1200.51 Definitions.

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

(a) The term *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7401–7425]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901–4916].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

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

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

(2) Order; and

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

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

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

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

(g) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

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

(i) *Party* includes the Department.

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

(k) *Petition* includes an amended petition.

(l) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or

any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

[67 FR 44350, July 2, 2002, as amended at 82 FR 58098, Dec. 11, 2017]

§ 1200.52 Institution of proceeding.

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

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

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

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

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

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

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

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

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

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

However, each reference to *marketing order* in the title shall mean *order*.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

Subpart C—General Definitions

AUTHORITY: 7 U.S.C. 2114, 2616, 2716, 2904, 4503, 4803, 4905, 6112, 6311, 6406, 7490, 7424 and 7812.

SOURCE: 83 FR 27682, June 14, 2018, unless otherwise noted.

§ 1200.100 General.

The terms defined/specified in this subpart shall apply to all research and promotion programs authorized under the Act.

§ 1200.101 Definitions.

(a) *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7411–7425]; the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901–4916].

(b) *Mail* means to transmit either electronically or through a postal or other delivery system, information or a package (*e.g.*, letter or envelope) to a recipient.

Subpart D—Administrative Procedures Governing Formulation of a Research and Promotion Order

SOURCE: 85 FR 45305, July 28, 2020, unless otherwise noted.

§ 1200.200 General.

The terms defined/specified in this subpart shall apply to all research and promotion programs authorized under the Act.

§ 1200.201 Definitions.

Act means the Commodity Research, Promotion, and Information Act of 1996 (7 U.S.C. 7411–7425).

Administrator means the Administrator of the Agricultural Marketing Service or any officer or employee of the United States Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

Cost of the Referendum means all USDA expenditures related to development of an order proposal, including, but not limited to, salaries, travel, supplies, printing, mailing, and shipping, and any costs related to an initial referendum.

Order means any order which may be issued pursuant to the Act.

Secretary means the United States Secretary of Agriculture or any officer or employee of the United States Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act for the Secretary.

§ 1200.202 Proposals.

(a) An order may be proposed by any association of producers of an agricultural commodity, by any person that may be affected by the issuance of an order with respect to an agricultural commodity, or by the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written proposal.

(b) Upon receipt of a proposal, the Administrator shall investigate and evaluate the proposal.

(c) If the proposal is submitted by an association of producers of the agricultural commodity or by any person that may be affected by the issuance of an order, and the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, the Administrator shall deny the proposal. The Administrator will promptly notify the proponent(s) of such denial, which will be accompanied by a brief statement of the grounds for the denial.

(d) If the proposal was submitted by an association of producers of the agricultural commodity or by any person that may be affected by the issuance of an order and the investigation and consideration lead the Administrator to conclude that an order will tend to effectuate the declared policy of the Act, the Administrator will promptly notify the proponent(s) of such conclusion, and the proponent(s) will be required to post a bond or other collateral in accordance with §1200.204.

(e) If the Administrator concludes that an order will tend to effectuate the declared policy of the Act, the Administrator shall publish the proposed order in the FEDERAL REGISTER and give due notice and opportunity for public comment on the proposed order.

§1200.203 Initial referendum.

For the purpose of ascertaining whether the persons to be covered by an order favor the order going into effect, the Administrator may conduct an initial referendum among persons to be subject to an assessment under the order who, during a representative period determined by the Administrator, engaged in the production or handling of the agricultural commodity or the importation of the agricultural commodity.

§1200.204 Reimbursement of Secretary's expenses.

The Administrator may require any person or organization proposing an order to post a bond or other collateral to cover the cost of the referendum as defined in §1200.201.

§1200.205 Termination of proceedings.

If at any time during development of a new program the Administrator concludes, based on public comments, referendum votes, or other available information, that an order will not tend to effectuate the declared policy of the Act, the Administrator shall terminate the proceedings and collect reimbursements from the bond or other collateral posted pursuant to §1200.204 for any expenses incurred in development of the proposed program.

§1200.206 Execution of the order.

(a) *Issuance of the order*. The Administrator shall, if the Administrator finds that it will tend to effectuate the purposes of the Act, issue the final order.

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

(c) *Notice of issuance*. After the Administrator issues the order, AMS will publish notice of the order's issuance in the FEDERAL REGISTER.

PART 1205—COTTON RESEARCH AND PROMOTION

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Subpart—Fiscal Period [Reserved]

AUTHORITY: 7 U.S.C. 2101–2118; 7 U.S.C 7401.

Subpart—Procedures for Conduct of Sign-up Period

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

DEFINITIONS

§ 1205.10 Act.

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

§ 1205.11 Administrator.

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

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof.

[81 FR 38894, June 15, 2016]

§ 1205.13 Upland cotton.

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

§ 1205.14 Department.

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

§ 1205.15 Farm Service Agency.

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

§ 1205.16 Order.

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

§ 1205.17 Person.

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

§ 1205.18 Producer.

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

[67 FR 21169, Apr. 30, 2002]

§ 1205.19 Importer.

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

§ 1205.20 Representative period.

The term *representative period* means the 2020 calendar year.

[86 FR 20257, Apr. 19, 2021]

§ 1205.21 Secretary.

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

§ 1205.22 State.

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

§ 1205.23 United States.

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

PROCEDURES

§ 1205.24 General.

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

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

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

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

§ 1205.25 Supervision of sign-up period.

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

§ 1205.26 Eligibility.

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

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

(1) Any person who was engaged in the production of Upland cotton during calendar year 2020; and

(2) Any person who was an importer of Upland cotton during calendar year 2020.

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

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

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

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

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

(g) Participation in the sign-up by proxy or power of attorney is not authorized.

[62 FR 1660, Jan. 13, 1997, as amended at 67 FR 21169, Apr. 30, 2002; 72 FR 51160, Sept. 6, 2007; 80 FR 36233, June 24, 2015; 86 FR 20257, Apr. 19, 2021]

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from June 21, 2021, until July 2, 2021, and October 18, 2021, until October 29, 2021. Those persons who favor the conduct of a continuance referendum and who wish to request that Department of Agriculture (USDA) conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by October 29, 2021.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and AMS shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, Agricultural Marketing Service (AMS) will post sign-up information, including sign-up forms, on its website: *http://www.ams.usda.gov/Cotton*. Importers who favor the conduct of a continuance referendum can download a form from the website, or request a sign-up form by contacting *CottonRP@usda.gov*

or (540) 361–2726 and one will be provided to them. Importers may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2020. The USDA, AMS, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077–8249 shall be considered the polling place for all cotton importers. All requests and supporting documents must be received by October 29, 2021.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the ''County FSA Office Sign-up Sheet.'' A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note ''ineligible'' in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by October 29, 2021.

[86 FR 52399, Sept. 21, 2021]

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Field Operations (DAFO), shall begin counting requests no later than October 29, 2021.FSA shall determine the number of eligible persons who favor the conduct of a continuance referendum.

[62 FR 1660, Jan. 13, 1997, as amended at 67 FR 21170, Apr. 30, 2002; 72 FR 51161, Sept. 6, 2007; 80 FR 36234, June 24, 2015; 86 FR 20258, Apr. 19, 2021; 86 FR 52399, Sept. 21, 2021]

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by November 5, 2021, a written report of the number of eligible producers who requested the conduct of a referendum and the number of ineligible persons who made requests.

(b) DAFO shall prepare, by November 5, 2021, a written report of the number of eligible importers who requested the conduct of a referendum and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by November 5, 2021, forward all county reports to DAFO. By November 12, 2021, DAFO shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406.

[86 FR 52399, Sept. 21, 2021]

§ 1205.30 Instructions and forms.

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

Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

SOURCE: 74 FR 51070, Oct. 5, 2009, unless otherwise noted.

§ 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Pub. L. 89–502, as amended).

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

(c) *Agricultural Marketing Service* also referred to as ''AMS'' means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

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

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as ''DAFO.''

(h) *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

(i)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton, and

(2) the term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

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

(o) *State* means each of the 50 states.

(p) *United States* means 50 states of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as ''CBP.''

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) Agricultural Marketing Service. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to

announce the dates, places, or methods of voting, and other pertinent information, and

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided,* That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided,* That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of cotton in the voters share of cotton imported from each such importer entity: Provided, that only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency.* Except for the functions specified in paragraph (a)

of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum. Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

§ 1205.203 Voting eligibility.

(a) *General eligibility requirements.* The following persons shall be eligible to vote in an announced referendum—

(1) each person who was engaged in the production of Upland cotton during the representative period; and

(2) each person who is an importer of Upland cotton and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton.

(b) *Special eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

§ 1205.204 Voting.

(a) *Place of voting.* The FSA county office serving the county in which the producer's farm is located shall be the producer's polling place. For a person

not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA county office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location. The U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The FSA county office shall establish a register of known eligible producer voters prior to the referendum. AMS shall establish a register of known eligible importer voters prior to the referendum and provide the list to FAS.

(c) *Voting.* (1) For Upland producers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from FSA county offices or through the Internet during the voting period. A completed and signed CN–100 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate FSA county office. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*. Upon request by Upland producers, ballots shall be mailed by FSA county offices.

(2) For cotton importers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from USDA, FSA in Washington, D.C. or through the Internet during the voting period. In addition, before the referendum, USDA shall mail a request form to each known, eligible, cotton importer. A completed and signed CN–100 and supporting documentation of CBP Form 7501, must be returned USDA, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*.

(d) Returning ballot to polling place. Each person to whom a ballot is issued by Internet, mail, facsimile, or in-person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) In the case of the mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by FSA county office or a representative of FSA, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by FSA for producers and importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the FSA offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the FSA county office for producer ballots or an FSA representative for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The county office or FSA representative shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them.

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if:

(1) It is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or

(2) It does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A producer ballot may be challenged by the member of the FSA county office and the importer ballot may be challenged by the representative of FSA. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the FSA county office or representative of FSA as to the eligibility of the voter to vote in the referendum.

§ 1205.206 Reporting results of referendum.

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

§ 1205.207 Challenge of correctness of county summary of ballots.

The FSA state offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided,* That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records.

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

§ 1205.209 Confidential information.

(a) The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1205.210 Additional instructions and forms.

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Subpart—Cotton Research and Promotion Order

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

DEFINITIONS

§ 1205.301 Secretary.

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

§ 1205.302 Act.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.303 Person.

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

§ 1205.304 Cotton.

Cotton means:

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

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

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

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.305 Upland cotton.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.306 Bale.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.307 Fiscal period.

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

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

§ 1205.308 Cotton Board.

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

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

§ 1205.309 Producer.

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

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

§ 1205.310 Importer.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.311 Handler.

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

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

§ 1205.312 Handle.

Handle means to harvest, gin, warehouse, compress, purchase, market,

transport, or otherwise acquire ownership or control of cotton.

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

§ 1205.313 United States.

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

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

§ 1205.314 Cotton-producing State.

Cotton-producing State means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; Virginia.

[75 FR 24374, May 5, 2010]

§ 1205.315 Marketing.

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

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

§ 1205.316 Cotton-Producer organization.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.317 Cotton-Importer organization.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.318 Contracting organization or association.

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

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

§ 1205.319 Cotton-producing region.

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

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

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

(c) Southwest Region: Kansas, Oklahoma and Texas;

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

[75 FR 24374, May 5, 2010]

§ 1205.320 Marketing year.

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

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

§ 1205.321 Part and subpart.

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

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

COTTON BOARD

§ 1205.322 Establishment and membership.

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

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

(2) Representatives of cotton importers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible importer organizations, as certified pursuant to § 1205.342, or, if the Secretary determines that a substantial number

of importers are not members of or their interests are not represented by any such eligible organization, from nominations made by importers in a manner authorized by the Secretary.

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

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

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.323 Term of office.

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

[56 FR 64472, Dec. 10, 1991]

§ 1205.324 Nominations.

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

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

§ 1205.325 Selection.

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

[56 FR 64473, Dec. 10, 1991]

§ 1205.326 Acceptance.

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

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

§ 1205.327 Vacancies.

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

[56 FR 64473, Dec. 10, 1991]

§ 1205.328 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of death, removal, resignation or disqualification of a member, the alternate for the member shall act for the member until a successor for such member is selected

and qualified. In the event that both a producer member of the Board and the member's alternate are unable to attend a meeting, the Board may designate any other alternate member from the same cotton-producing state or region to serve in such member's place and stead of such meeting. In the event that both an importer member and the member's alternate are unable to attend a meeting, the Board may designate any other importer alternate member to serve in such member's place and stead at such meeting.

[56 FR 64473, Dec. 10, 1991]

§ 1205.329 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

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

§ 1205.330 Compensation and reimbursement.

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

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

§ 1205.331 Powers.

The Board shall have the following powers:

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

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

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

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

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

§ 1205.332 Duties.

The Board shall have the following duties:

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

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

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.333, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of costs thereof with funds collected pursuant to § 1205.335, with an organization or association whose governing body consists of cotton producers selected by the cotton-producer organizations certified by the Secretary under § 1205.341, in such manner that the producers of each cotton-producing state will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such state bears to the total marketed by the producers of all cotton-producing states. Any such contract or agreement shall provide that

such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

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

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

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

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

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

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

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

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

RESEARCH AND PROMOTION

§ 1205.333 Research and promotion.

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

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

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

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

EXPENSES AND ASSESSMENTS

§ 1205.334 Expenses.

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

(b) The Board shall reimburse the Secretary for:

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

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

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

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

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

§ 1205.335 Assessments.

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

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

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

(i) The current value of the cotton, or

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

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

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

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

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

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

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

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

[56 FR 64473, Dec. 10, 1991]

§ 1205.336 "Importer Reimbursements".

Any cotton importer against whose imports any assessment is made and collected under the authority of the Act who has reason to believe that such assessment or any portion of such assessment was made on U.S. produced cotton or cotton other than Upland cotton shall have the right to demand and receive from the Cotton Board a reimbursement of the assessment or portion of the assessment upon submission of proof satisfactory to the Board that the importer paid the assessment

and that the cotton was produced in the U.S. or is other than Upland cotton. Any such demand shall be made by the importer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time periods shall provide the importer at least 90 days from the date of collection to submit the reimbursement form to the Board. Any such reimbursement shall be made within 60 days after demand therefor.

[56 FR 64474, Dec. 10, 1991]

§ 1205.337 Influencing governmental action.

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

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

REPORTS, BOOKS, AND RECORDS

§ 1205.338 Reports.

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

(a) Number of bales handled or imported;

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

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

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

[56 FR 64474, Dec. 10, 1991]

§ 1205.339 Books and records.

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

[56 FR 64474, Dec. 10, 1991]

§ 1205.340 Confidential treatment.

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

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

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

[56 FR 64474, Dec. 10, 1991]

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

§ 1205.341 Certification of cotton producer organization.

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

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

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

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

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

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

(f) Functions of the organization; and

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

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

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

§1205.342 Certification of cotton importer organizations.

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

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

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

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

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

(e) Functions of the organization; and

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

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

[56 FR 64475, Dec. 10, 1991]

MISCELLANEOUS

§1205.343 Suspension and termination.

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

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cotton producers and importers (if subject to the Order) voting in the most recent referendum, to determine whether cotton producers and importers subject to the Order favor the suspension or termination of this subpart, except that in counting such request for a referendum, not more than 20 percent of such request may be from producers

from any one state or importers of cotton (if subject to the Order). The Secretary shall suspend or terminate such subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers subject to the Order voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of cotton, and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

[56 FR 64474, Dec. 10, 1991]

§ 1205.345 Proceedings after termination.

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

(b) The said trustees shall—

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

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

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

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

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

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

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

§ 1205.346 Effect of termination or amendment.

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

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

§ 1205.347 Personal liability.

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

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

§ 1205.348 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances

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

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

Subpart—Members of Cotton Board

§ 1205.401 Definitions.

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

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

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

§ 1205.402 Determination of Cotton Board membership.

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

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

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

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

(e) Each year the Director shall:

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

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

[56 FR 65980, Dec. 20, 1991]

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing state and all certified importer organizations of the location, date, and time of the caucus for nominating producer and importer representatives for the Cotton Board as specified in § 1205.324. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton-producing state and each importer organization will be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. The representative of a cotton producer organization shall be a cotton

producer and resident of such state, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of an importer organization shall be an importer of cotton and/or products containing cotton, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting of cotton producer organizations in each state and of cotton importer organizations will ascertain the qualifications and eligibility of each representative of a cotton producer organization or cotton importer organization to participate in said meeting and to make nominations.

(b) Each caucus will be conducted as follows:

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

(2) The representatives in attendance from the certified organizations will then select a chairperson and secretary;

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

[56 FR 65981, Dec. 20, 1991]

Subpart—Cotton Board Rules and Regulations

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

DEFINITIONS

§ 1205.500 Terms defined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) *Cotton* means:

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

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

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

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

(r) *Industrial products* means cotton-containing products which are classified in the Harmonized Tariff Schedule of the United States under classifications other than textile classifications. Certain cotton-containing textile products under textile classifications shall also be considered to be industrial products, and are therefore not included in the table appearing in these regulations as products subject to assessment. Such products include, but are not limited to textile fabrics coated, impregnated, covered, or laminated, with other materials, textile piping and tubing, and belting materials.

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

GENERAL

§ 1205.505 Communication.

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

[57 FR 29186, July 1, 1992]

ASSESSMENTS

§ 1205.510 Levy of assessments.

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

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

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

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

ASSESSMENT CHART [1]

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

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

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

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

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

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.4691 cents per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5007106010	0.2713	0.3986
5007106020	0.2713	0.3986
5007906010	0.2713	0.3986
5007906020	0.2713	0.3986
5112904000	0.1085	0.1594
5112905000	0.1085	0.1594
5112909010	0.1085	0.1594
5112909090	0.1085	0.1594
5201000500	1	1.4691
5201001200	1	1.4691
5201001400	1	1.4691
5201001800	1	1.4691
5201002200	1	1.4691
5201002400	1	1.4691
5201002800	1	1.4691
5201003400	1	1.4691
5201003800	1	1.4691
5204110000	1.0526	1.5464
5204190000	0.6316	0.9279
5204200000	1.0526	1.5464
5205111000	1	1.4691
5205112000	1	1.4691
5205121000	1	1.4691
5205122000	1	1.4691
5205131000	1	1.4691
5205132000	1	1.4691
5205141000	1	1.4691
5205142000	1	1.4691
5205151000	1	1.4691
5205152000	1	1.4691
5205210020	1.044	1.5337
5205210090	1.044	1.5337
5205220020	1.044	1.5337
5205220090	1.044	1.5337
5205230020	1.044	1.5337
5205230090	1.044	1.5337
5205240020	1.044	1.5337
5205240090	1.044	1.5337
5205260020	1.044	1.5337
5205260090	1.044	1.5337
5205270020	1.044	1.5337
5205270090	1.044	1.5337
5205280020	1.044	1.5337
5205280090	1.044	1.5337
5205310000	1	1.4691
5205320000	1	1.4691
5205330000	1	1.4691
5205340000	1	1.4691
5205350000	1	1.4691
5205410020	1.044	1.5337
5205410090	1.044	1.5337

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5205420021	1.044	1.5337
5205420029	1.044	1.5337
5205420090	1.044	1.5337
5205430021	1.044	1.5337
5205430029	1.044	1.5337
5205430090	1.044	1.5337
5205440021	1.044	1.5337
5205440029	1.044	1.5337
5205440090	1.044	1.5337
5205460021	1.044	1.5337
5205460029	1.044	1.5337
5205460090	1.044	1.5337
5205470021	1.044	1.5337
5205470029	1.044	1.5337
5205470090	1.044	1.5337
5205480020	1.044	1.5337
5205480090	1.044	1.5337
5206110000	0.7368	1.0824
5206120000	0.7368	1.0824
5206130000	0.7368	1.0824
5206140000	0.7368	1.0824
5206150000	0.7368	1.0824
5206210000	0.7692	1.1300
5206220000	0.7692	1.1300
5206230000	0.7692	1.1300
5206240000	0.7692	1.1300
5206250000	0.7692	1.1300
5206310000	0.7368	1.0824
5206320000	0.7368	1.0824
5206330000	0.7368	1.0824
5206340000	0.7368	1.0824
5206350000	0.7368	1.0824
5206410000	0.7692	1.1300
5206420000	0.7692	1.1300
5206430000	0.7692	1.1300
5206440000	0.7692	1.1300
5206450000	0.7692	1.1300
5207100000	0.9474	1.3918
5207900000	0.6316	0.9279
5208112020	1.0852	1.5943
5208112040	1.0852	1.5943
5208112090	1.0852	1.5943
5208114020	1.0852	1.5943
5208114040	1.0852	1.5943
5208114060	1.0852	1.5943
5208114090	1.0852	1.5943
5208116000	1.0852	1.5943
5208118020	1.0852	1.5943
5208118090	1.0852	1.5943
5208124020	1.0852	1.5943
5208124040	1.0852	1.5943
5208124090	1.0852	1.5943
5208126020	1.0852	1.5943
5208126040	1.0852	1.5943
5208126060	1.0852	1.5943
5208126090	1.0852	1.5943
5208128020	1.0852	1.5943
5208128090	1.0852	1.5943
5208130000	1.0852	1.5943
5208192020	1.0852	1.5943
5208192090	1.0852	1.5943
5208194020	1.0852	1.5943
5208194090	1.0852	1.5943
5208196020	1.0852	1.5943
5208196090	1.0852	1.5943
5208198020	1.0852	1.5943
5208198090	1.0852	1.5943
5208212020	1.0852	1.5943
5208212040	1.0852	1.5943
5208212090	1.0852	1.5943

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5208214020	1.0852	1.5943
5208214040	1.0852	1.5943
5208214060	1.0852	1.5943
5208214090	1.0852	1.5943
5208216020	1.0852	1.5943
5208216090	1.0852	1.5943
5208224020	1.0852	1.5943
5208224040	1.0852	1.5943
5208224090	1.0852	1.5943
5208226020	1.0852	1.5943
5208226040	1.0852	1.5943
5208226060	1.0852	1.5943
5208226090	1.0852	1.5943
5208228020	1.0852	1.5943
5208228090	1.0852	1.5943
5208230000	1.0852	1.5943
5208292020	1.0852	1.5943
5208292090	1.0852	1.5943
5208294020	1.0852	1.5943
5208294090	1.0852	1.5943
5208296020	1.0852	1.5943
5208296090	1.0852	1.5943
5208298020	1.0852	1.5943
5208298090	1.0852	1.5943
5208312000	1.0852	1.5943
5208314020	1.0852	1.5943
5208314040	1.0852	1.5943
5208314090	1.0852	1.5943
5208316020	1.0852	1.5943
5208316040	1.0852	1.5943
5208316060	1.0852	1.5943
5208316090	1.0852	1.5943
5208318020	1.0852	1.5943
5208318090	1.0852	1.5943
5208321000	1.0852	1.5943
5208323020	1.0852	1.5943
5208323040	1.0852	1.5943
5208323090	1.0852	1.5943
5208324020	1.0852	1.5943
5208324040	1.0852	1.5943
5208324060	1.0852	1.5943
5208324090	1.0852	1.5943
5208325020	1.0852	1.5943
5208325090	1.0852	1.5943
5208330000	1.0852	1.5943
5208392020	1.0852	1.5943
5208392090	1.0852	1.5943
5208394020	1.0852	1.5943
5208394090	1.0852	1.5943
5208396020	1.0852	1.5943
5208396090	1.0852	1.5943
5208398020	1.0852	1.5943
5208398090	1.0852	1.5943
5208412000	1.0852	1.5943
5208414000	1.0852	1.5943
5208416000	1.0852	1.5943
5208418000	1.0852	1.5943
5208421000	1.0852	1.5943
5208423000	1.0852	1.5943
5208424000	1.0852	1.5943
5208425000	1.0852	1.5943
5208430000	1.0852	1.5943
5208492000	1.0852	1.5943
5208494010	1.0852	1.5943
5208494020	1.0852	1.5943
5208494090	1.0852	1.5943
5208496010	1.0852	1.5943
5208496020	1.0852	1.5943
5208496030	1.0852	1.5943
5208496090	1.0852	1.5943

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5208498020	1.0852	1.5943
5208498090	1.0852	1.5943
5208512000	1.0852	1.5943
5208514020	1.0852	1.5943
5208514040	1.0852	1.5943
5208514090	1.0852	1.5943
5208516020	1.0852	1.5943
5208516040	1.0852	1.5943
5208516060	1.0852	1.5943
5208516090	1.0852	1.5943
5208518020	1.0852	1.5943
5208518090	1.0852	1.5943
5208521000	1.0852	1.5943
5208523020	1.0852	1.5943
5208523035	1.0852	1.5943
5208523045	1.0852	1.5943
5208523090	1.0852	1.5943
5208524020	1.0852	1.5943
5208524035	1.0852	1.5943
5208524045	1.0852	1.5943
5208524055	1.0852	1.5943
5208524065	1.0852	1.5943
5208524090	1.0852	1.5943
5208525020	1.0852	1.5943
5208525090	1.0852	1.5943
5208591000	1.0852	1.5943
5208592015	1.0852	1.5943
5208592025	1.0852	1.5943
5208592085	1.0852	1.5943
5208592095	1.0852	1.5943
5208594020	1.0852	1.5943
5208594090	1.0852	1.5943
5208596020	1.0852	1.5943
5208596090	1.0852	1.5943
5208598020	1.0852	1.5943
5208598090	1.0852	1.5943
5209110020	1.0309	1.5145
5209110025	1.0309	1.5145
5209110035	1.0309	1.5145
5209110050	1.0309	1.5145
5209110090	1.0309	1.5145
5209120020	1.0309	1.5145
5209120040	1.0309	1.5145
5209190020	1.0309	1.5145
5209190040	1.0309	1.5145
5209190060	1.0309	1.5145
5209190090	1.0309	1.5145
5209210020	1.0309	1.5145
5209210025	1.0309	1.5145
5209210035	1.0309	1.5145
5209210050	1.0309	1.5145
5209210090	1.0309	1.5145
5209220020	1.0309	1.5145
5209220040	1.0309	1.5145
5209290020	1.0309	1.5145
5209290040	1.0309	1.5145
5209290060	1.0309	1.5145
5209290090	1.0309	1.5145
5209313000	1.0309	1.5145
5209316020	1.0309	1.5145
5209316025	1.0309	1.5145
5209316035	1.0309	1.5145
5209316050	1.0309	1.5145
5209316090	1.0309	1.5145
5209320020	1.0309	1.5145
5209320040	1.0309	1.5145
5209390020	1.0309	1.5145
5209390040	1.0309	1.5145
5209390060	1.0309	1.5145
5209390080	1.0309	1.5145

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5209390090	1.0309	1.5145
5209413000	1.0309	1.5145
5209416020	1.0309	1.5145
5209416040	1.0309	1.5145
5209420020	0.9767	1.4349
5209420040	0.9767	1.4349
5209420060	0.9767	1.4349
5209420080	0.9767	1.4349
5209430030	1.0309	1.5145
5209430050	1.0309	1.5145
5209490020	1.0309	1.5145
5209490040	1.0309	1.5145
5209490090	1.0309	1.5145
5209513000	1.0309	1.5145
5209516015	1.0852	1.5943
5209516025	1.0852	1.5943
5209516032	1.0852	1.5943
5209516035	1.0852	1.5943
5209516050	1.0852	1.5943
5209516090	1.0852	1.5943
5209520020	1.0852	1.5943
5209520040	1.0852	1.5943
5209590015	1.0852	1.5943
5209590025	1.0852	1.5943
5209590040	1.0852	1.5943
5209590060	1.0852	1.5943
5209590090	1.0852	1.5943
5210114020	0.6511	0.9565
5210114040	0.6511	0.9565
5210114090	0.6511	0.9565
5210116020	0.6511	0.9565
5210116040	0.6511	0.9565
5210116060	0.6511	0.9565
5210116090	0.6511	0.9565
5210118020	0.6511	0.9565
5210118090	0.6511	0.9565
5210191000	0.6511	0.9565
5210192020	0.6511	0.9565
5210192090	0.6511	0.9565
5210194020	0.6511	0.9565
5210194090	0.6511	0.9565
5210196020	0.6511	0.9565
5210196090	0.6511	0.9565
5210198020	0.6511	0.9565
5210198090	0.6511	0.9565
5210214020	0.6511	0.9565
5210214040	0.6511	0.9565
5210214090	0.6511	0.9565
5210216020	0.6511	0.9565
5210216040	0.6511	0.9565
5210216060	0.6511	0.9565
5210216090	0.6511	0.9565
5210218020	0.6511	0.9565
5210218090	0.6511	0.9565
5210291000	0.6511	0.9565
5210292020	0.6511	0.9565
5210292090	0.6511	0.9565
5210294020	0.6511	0.9565
5210294090	0.6511	0.9565
5210296020	0.6511	0.9565
5210296090	0.6511	0.9565
5210298020	0.6511	0.9565
5210298090	0.6511	0.9565
5210314020	0.6511	0.9565
5210314040	0.6511	0.9565
5210314090	0.6511	0.9565
5210316020	0.6511	0.9565
5210316040	0.6511	0.9565
5210316060	0.6511	0.9565
5210316090	0.6511	0.9565

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5210318020	0.6511	0.9565
5210318090	0.6511	0.9565
5210320000	0.6511	0.9565
5210392020	0.6511	0.9565
5210392090	0.6511	0.9565
5210394020	0.6511	0.9565
5210394090	0.6511	0.9565
5210396020	0.6511	0.9565
5210396090	0.6511	0.9565
5210398020	0.6511	0.9565
5210398090	0.6511	0.9565
5210414000	0.6511	0.9565
5210416000	0.6511	0.9565
5210418000	0.6511	0.9565
5210491000	0.6511	0.9565
5210492000	0.6511	0.9565
5210494010	0.6511	0.9565
5210494020	0.6511	0.9565
5210494090	0.6511	0.9565
5210496010	0.6511	0.9565
5210496020	0.6511	0.9565
5210496090	0.6511	0.9565
5210498020	0.6511	0.9565
5210498090	0.6511	0.9565
5210514020	0.6511	0.9565
5210514040	0.6511	0.9565
5210514090	0.6511	0.9565
5210516020	0.6511	0.9565
5210516040	0.6511	0.9565
5210516060	0.6511	0.9565
5210516090	0.6511	0.9565
5210518020	0.6511	0.9565
5210518090	0.6511	0.9565
5210591000	0.6511	0.9565
5210592020	0.6511	0.9565
5210592090	0.6511	0.9565
5210594020	0.6511	0.9565
5210594090	0.6511	0.9565
5210596020	0.6511	0.9565
5210596090	0.6511	0.9565
5210598020	0.6511	0.9565
5210598090	0.6511	0.9565
5211110020	0.6511	0.9565
5211110025	0.6511	0.9565
5211110035	0.6511	0.9565
5211110050	0.6511	0.9565
5211110090	0.6511	0.9565
5211120020	0.6511	0.9565
5211120040	0.6511	0.9565
5211190020	0.6511	0.9565
5211190040	0.6511	0.9565
5211190060	0.6511	0.9565
5211190090	0.6511	0.9565
5211202120	0.6511	0.9565
5211202125	0.6511	0.9565
5211202135	0.6511	0.9565
5211202150	0.6511	0.9565
5211202190	0.6511	0.9565
5211202220	0.6511	0.9565
5211202240	0.6511	0.9565
5211202920	0.6511	0.9565
5211202940	0.6511	0.9565
5211202960	0.6511	0.9565
5211202990	0.6511	0.9565
5211310020	0.6511	0.9565
5211310025	0.6511	0.9565
5211310035	0.6511	0.9565
5211310050	0.6511	0.9565
5211310090	0.6511	0.9565
5211320020	0.6511	0.9565

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5211320040	0.6511	0.9565
5211390020	0.6511	0.9565
5211390040	0.6511	0.9565
5211390060	0.6511	0.9565
5211390090	0.6511	0.9565
5211410020	0.6511	0.9565
5211410040	0.6511	0.9565
5211420020	0.7054	1.0363
5211420040	0.7054	1.0363
5211420060	0.6511	0.9565
5211420080	0.6511	0.9565
5211430030	0.6511	0.9565
5211430050	0.6511	0.9565
5211490020	0.6511	0.9565
5211490090	0.6511	0.9565
5211510020	0.6511	0.9565
5211510030	0.6511	0.9565
5211510050	0.6511	0.9565
5211510090	0.6511	0.9565
5211520020	0.6511	0.9565
5211520040	0.6511	0.9565
5211590015	0.6511	0.9565
5211590025	0.6511	0.9565
5211590040	0.6511	0.9565
5211590060	0.6511	0.9565
5211590090	0.6511	0.9565
5212111010	0.5845	0.8587
5212111020	0.6231	0.9154
5212116010	0.8681	1.2753
5212116020	0.8681	1.2753
5212116030	0.8681	1.2753
5212116040	0.8681	1.2753
5212116050	0.8681	1.2753
5212116060	0.8681	1.2753
5212116070	0.8681	1.2753
5212116080	0.8681	1.2753
5212116090	0.8681	1.2753
5212121010	0.5845	0.8587
5212121020	0.6231	0.9154
5212126010	0.8681	1.2753
5212126020	0.8681	1.2753
5212126030	0.8681	1.2753
5212126040	0.8681	1.2753
5212126050	0.8681	1.2753
5212126060	0.8681	1.2753
5212126070	0.8681	1.2753
5212126080	0.8681	1.2753
5212126090	0.8681	1.2753
5212131010	0.5845	0.8587
5212131020	0.6231	0.9154
5212136010	0.8681	1.2753
5212136020	0.8681	1.2753
5212136030	0.8681	1.2753
5212136040	0.8681	1.2753
5212136050	0.8681	1.2753
5212136060	0.8681	1.2753
5212136070	0.8681	1.2753
5212136080	0.8681	1.2753
5212136090	0.8681	1.2753
5212141010	0.5845	0.8587
5212141020	0.6231	0.9154
5212146010	0.8681	1.2753
5212146020	0.8681	1.2753
5212146030	0.8681	1.2753
5212146090	0.8681	1.2753
5212151010	0.5845	0.8587
5212151020	0.6231	0.9154
5212156010	0.8681	1.2753
5212156020	0.8681	1.2753
5212156030	0.8681	1.2753

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5212156040	0.8681	1.2753
5212156050	0.8681	1.2753
5212156060	0.8681	1.2753
5212156070	0.8681	1.2753
5212156080	0.8681	1.2753
5212156090	0.8681	1.2753
5212211010	0.5845	0.8587
5212211020	0.6231	0.9154
5212216010	0.8681	1.2753
5212216020	0.8681	1.2753
5212216030	0.8681	1.2753
5212216040	0.8681	1.2753
5212216050	0.8681	1.2753
5212216060	0.8681	1.2753
5212216090	0.8681	1.2753
5212221010	0.5845	0.8587
5212221020	0.6231	0.9154
5212226010	0.8681	1.2753
5212226020	0.8681	1.2753
5212226030	0.8681	1.2753
5212226040	0.8681	1.2753
5212226050	0.8681	1.2753
5212226060	0.8681	1.2753
5212226090	0.8681	1.2753
5212231010	0.5845	0.8587
5212231020	0.6231	0.9154
5212236010	0.8681	1.2753
5212236020	0.8681	1.2753
5212236030	0.8681	1.2753
5212236040	0.8681	1.2753
5212236050	0.8681	1.2753
5212236060	0.8681	1.2753
5212236090	0.8681	1.2753
5212241010	0.5845	0.8587
5212241020	0.6231	0.9154
5212246010	0.8681	1.2753
5212246020	0.7054	1.0363
5212246030	0.8681	1.2753
5212246040	0.8681	1.2753
5212246090	0.8681	1.2753
5212251010	0.5845	0.8587
5212251020	0.6231	0.9154
5212256010	0.8681	1.2753
5212256020	0.8681	1.2753
5212256030	0.8681	1.2753
5212256040	0.8681	1.2753
5212256050	0.8681	1.2753
5212256060	0.8681	1.2753
5212256090	0.8681	1.2753
5309213005	0.5426	0.7971
5309213010	0.5426	0.7971
5309213015	0.5426	0.7971
5309213020	0.5426	0.7971
5309214010	0.2713	0.3986
5309214090	0.2713	0.3986
5309293005	0.5426	0.7971
5309293010	0.5426	0.7971
5309293015	0.5426	0.7971
5309293020	0.5426	0.7971
5309294010	0.2713	0.3986
5309294090	0.2713	0.3986
5311003005	0.5426	0.7971
5311003010	0.5426	0.7971
5311003015	0.5426	0.7971
5311003020	0.5426	0.7971
5407810010	0.5426	0.7971
5407810020	0.5426	0.7971
5407810030	0.5426	0.7971
5407810040	0.5426	0.7971
5407810090	0.5426	0.7971

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5407820010	0.5426	0.7971
5407820020	0.5426	0.7971
5407820030	0.5426	0.7971
5407820040	0.5426	0.7971
5407820090	0.5426	0.7971
5407830010	0.5426	0.7971
5407830020	0.5426	0.7971
5407830030	0.5426	0.7971
5407830040	0.5426	0.7971
5407830090	0.5426	0.7971
5407840010	0.5426	0.7971
5407840020	0.5426	0.7971
5407840030	0.5426	0.7971
5407840040	0.5426	0.7971
5407840090	0.5426	0.7971
5509210000	0.1053	0.1547
5509220010	0.1053	0.1547
5509220090	0.1053	0.1547
5509530030	0.3158	0.4639
5509530060	0.3158	0.4639
5509620000	0.5263	0.7732
5509920000	0.5263	0.7732
5510300000	0.3684	0.5412
5511200000	0.3158	0.4639
5512110010	0.1085	0.1594
5512110022	0.1085	0.1594
5512110027	0.1085	0.1594
5512110030	0.1085	0.1594
5512110040	0.1085	0.1594
5512110050	0.1085	0.1594
5512110060	0.1085	0.1594
5512110070	0.1085	0.1594
5512110090	0.1085	0.1594
5512190005	0.1085	0.1594
5512190010	0.1085	0.1594
5512190015	0.1085	0.1594
5512190022	0.1085	0.1594
5512190027	0.1085	0.1594
5512190030	0.1085	0.1594
5512190035	0.1085	0.1594
5512190040	0.1085	0.1594
5512190045	0.1085	0.1594
5512190050	0.1085	0.1594
5512190090	0.1085	0.1594
5512210010	0.0326	0.0479
5512210020	0.0326	0.0479
5512210030	0.0326	0.0479
5512210040	0.0326	0.0479
5512210060	0.0326	0.0479
5512210070	0.0326	0.0479
5512210090	0.0326	0.0479
5512290010	0.217	0.3188
5512910010	0.0543	0.0798
5512990005	0.0543	0.0798
5512990010	0.0543	0.0798
5512990015	0.0543	0.0798
5512990020	0.0543	0.0798
5512990025	0.0543	0.0798
5512990030	0.0543	0.0798
5512990035	0.0543	0.0798
5512990040	0.0543	0.0798
5512990045	0.0543	0.0798
5512990090	0.0543	0.0798
5513110020	0.3581	0.5261
5513110040	0.3581	0.5261
5513110060	0.3581	0.5261
5513110090	0.3581	0.5261
5513120000	0.3581	0.5261
5513130020	0.3581	0.5261
5513130040	0.3581	0.5261

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5513130090	0.3581	0.5261
5513190010	0.3581	0.5261
5513190020	0.3581	0.5261
5513190030	0.3581	0.5261
5513190040	0.3581	0.5261
5513190050	0.3581	0.5261
5513190060	0.3581	0.5261
5513190090	0.3581	0.5261
5513210020	0.3581	0.5261
5513210040	0.3581	0.5261
5513210060	0.3581	0.5261
5513210090	0.3581	0.5261
5513230121	0.3581	0.5261
5513230141	0.3581	0.5261
5513230191	0.3581	0.5261
5513290010	0.3581	0.5261
5513290020	0.3581	0.5261
5513290030	0.3581	0.5261
5513290040	0.3581	0.5261
5513290050	0.3581	0.5261
5513290060	0.3581	0.5261
5513290090	0.3581	0.5261
5513310000	0.3581	0.5261
5513390111	0.3581	0.5261
5513390115	0.3581	0.5261
5513390191	0.3581	0.5261
5513410020	0.3581	0.5261
5513410040	0.3581	0.5261
5513410060	0.3581	0.5261
5513410090	0.3581	0.5261
5513491000	0.3581	0.5261
5513492020	0.3581	0.5261
5513492040	0.3581	0.5261
5513492090	0.3581	0.5261
5513499010	0.3581	0.5261
5513499020	0.3581	0.5261
5513499030	0.3581	0.5261
5513499040	0.3581	0.5261
5513499050	0.3581	0.5261
5513499060	0.3581	0.5261
5513499090	0.3581	0.5261
5514110020	0.4341	0.6377
5514110030	0.4341	0.6377
5514110050	0.4341	0.6377
5514110090	0.4341	0.6377
5514120020	0.4341	0.6377
5514120040	0.4341	0.6377
5514191020	0.4341	0.6377
5514191040	0.4341	0.6377
5514191090	0.4341	0.6377
5514199010	0.4341	0.6377
5514199020	0.4341	0.6377
5514199030	0.4341	0.6377
5514199040	0.4341	0.6377
5514199090	0.4341	0.6377
5514210020	0.4341	0.6377
5514210030	0.4341	0.6377
5514210050	0.4341	0.6377
5514210090	0.4341	0.6377
5514220020	0.4341	0.6377
5514220040	0.4341	0.6377
5514230020	0.4341	0.6377
5514230040	0.4341	0.6377
5514230090	0.4341	0.6377
5514290010	0.4341	0.6377
5514290020	0.4341	0.6377
5514290030	0.4341	0.6377
5514290040	0.4341	0.6377
5514290090	0.4341	0.6377
5514303100	0.4341	0.6377

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5514303210	0.4341	0.6377
5514303215	0.4341	0.6377
5514303280	0.4341	0.6377
5514303310	0.4341	0.6377
5514303390	0.4341	0.6377
5514303910	0.4341	0.6377
5514303920	0.4341	0.6377
5514303990	0.4341	0.6377
5514410020	0.4341	0.6377
5514410030	0.4341	0.6377
5514410050	0.4341	0.6377
5514410090	0.4341	0.6377
5514420020	0.4341	0.6377
5514420040	0.4341	0.6377
5514430020	0.4341	0.6377
5514430040	0.4341	0.6377
5514430090	0.4341	0.6377
5514490010	0.4341	0.6377
5514490020	0.4341	0.6377
5514490030	0.4341	0.6377
5514490040	0.4341	0.6377
5514490090	0.4341	0.6377
5515110005	0.1085	0.1594
5515110010	0.1085	0.1594
5515110015	0.1085	0.1594
5515110020	0.1085	0.1594
5515110025	0.1085	0.1594
5515110030	0.1085	0.1594
5515110035	0.1085	0.1594
5515110040	0.1085	0.1594
5515110045	0.1085	0.1594
5515110090	0.1085	0.1594
5515120010	0.1085	0.1594
5515120022	0.1085	0.1594
5515120027	0.1085	0.1594
5515120030	0.1085	0.1594
5515120040	0.1085	0.1594
5515120090	0.1085	0.1594
5515190005	0.1085	0.1594
5515190010	0.1085	0.1594
5515190015	0.1085	0.1594
5515190020	0.1085	0.1594
5515190025	0.1085	0.1594
5515190030	0.1085	0.1594
5515190035	0.1085	0.1594
5515190040	0.1085	0.1594
5515190045	0.1085	0.1594
5515190090	0.1085	0.1594
5515290005	0.1085	0.1594
5515290010	0.1085	0.1594
5515290015	0.1085	0.1594
5515290020	0.1085	0.1594
5515290025	0.1085	0.1594
5515290030	0.1085	0.1594
5515290035	0.1085	0.1594
5515290040	0.1085	0.1594
5515290045	0.1085	0.1594
5515290090	0.1085	0.1594
5515999005	0.1085	0.1594
5515999010	0.1085	0.1594
5515999015	0.1085	0.1594
5515999020	0.1085	0.1594
5515999025	0.1085	0.1594
5515999030	0.1085	0.1594
5515999035	0.1085	0.1594
5515999040	0.1085	0.1594
5515999045	0.1085	0.1594
5515999090	0.1085	0.1594
5516210010	0.1085	0.1594
5516210020	0.1085	0.1594

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5516210030	0.1085	0.1594
5516210040	0.1085	0.1594
5516210090	0.1085	0.1594
5516220010	0.1085	0.1594
5516220020	0.1085	0.1594
5516220030	0.1085	0.1594
5516220040	0.1085	0.1594
5516220090	0.1085	0.1594
5516230010	0.1085	0.1594
5516230020	0.1085	0.1594
5516230030	0.1085	0.1594
5516230040	0.1085	0.1594
5516230090	0.1085	0.1594
5516240010	0.1085	0.1594
5516240020	0.1085	0.1594
5516240030	0.1085	0.1594
5516240040	0.1085	0.1594
5516240085	0.1085	0.1594
5516240095	0.1085	0.1594
5516410010	0.3798	0.5580
5516410022	0.3798	0.5580
5516410027	0.3798	0.5580
5516410030	0.3798	0.5580
5516410040	0.3798	0.5580
5516410050	0.3798	0.5580
5516410060	0.3798	0.5580
5516410070	0.3798	0.5580
5516410090	0.3798	0.5580
5516420010	0.3798	0.5580
5516420022	0.3798	0.5580
5516420027	0.3798	0.5580
5516420030	0.3798	0.5580
5516420040	0.3798	0.5580
5516420050	0.3798	0.5580
5516420060	0.3798	0.5580
5516420070	0.3798	0.5580
5516420090	0.3798	0.5580
5516430010	0.217	0.3188
5516430015	0.3798	0.5580
5516430020	0.3798	0.5580
5516430035	0.3798	0.5580
5516430080	0.3798	0.5580
5516440010	0.3798	0.5580
5516440022	0.3798	0.5580
5516440027	0.3798	0.5580
5516440030	0.3798	0.5580
5516440040	0.3798	0.5580
5516440050	0.3798	0.5580
5516440060	0.3798	0.5580
5516440070	0.3798	0.5580
5516440090	0.3798	0.5580
5516910010	0.0543	0.0798
5516910020	0.0543	0.0798
5516910030	0.0543	0.0798
5516910040	0.0543	0.0798
5516910050	0.0543	0.0798
5516910060	0.0543	0.0798
5516910070	0.0543	0.0798
5516910090	0.0543	0.0798
5516920010	0.0543	0.0798
5516920020	0.0543	0.0798
5516920030	0.0543	0.0798
5516920040	0.0543	0.0798
5516920050	0.0543	0.0798
5516920060	0.0543	0.0798
5516920070	0.0543	0.0798
5516920090	0.0543	0.0798
5516930010	0.0543	0.0798
5516930020	0.0543	0.0798
5516930090	0.0543	0.0798

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5516940010	0.0543	0.0798
5516940020	0.0543	0.0798
5516940030	0.0543	0.0798
5516940040	0.0543	0.0798
5516940050	0.0543	0.0798
5516940060	0.0543	0.0798
5516940070	0.0543	0.0798
5516940090	0.0543	0.0798
5601210010	0.9767	1.4349
5601210090	0.9767	1.4349
5601220010	0.1085	0.1594
5601220050	0.1085	0.1594
5601220091	0.1085	0.1594
5601300000	0.3256	0.4783
5602101000	0.0543	0.0798
5602109090	0.4341	0.6377
5602290000	0.4341	0.6377
5602909000	0.3256	0.4783
5603143000	0.2713	0.3986
5603910010	0.0217	0.0319
5603910090	0.0651	0.0956
5603920010	0.0217	0.0319
5603920070	0.0651	0.0956
5603920095	0.0651	0.0956
5603930010	0.0217	0.0319
5603930090	0.0651	0.0956
5603941090	0.3256	0.4783
5603943000	0.1628	0.2392
5603949010	0.0326	0.0479
5604100000	0.2632	0.3867
5604909000	0.2105	0.3092
5605009000	0.1579	0.2320
5606000010	0.1263	0.1855
5606000090	0.1263	0.1855
5607502500	0.1684	0.2474
5607909000	0.8421	1.2371
5608901000	1.0526	1.5464
5608902300	0.6316	0.9279
5608902700	0.6316	0.9279
5608903000	0.3158	0.4639
5609001000	0.8421	1.2371
5609004000	0.2105	0.3092
5701101300	0.0526	0.0773
5701101600	0.0526	0.0773
5701104000	0.0526	0.0773
5701109000	0.0526	0.0773
5701901010	1	1.4691
5701901020	1	1.4691
5701901030	0.0526	0.0773
5701901090	0.0526	0.0773
5701902010	0.9474	1.3918
5701902020	0.9474	1.3918
5701902030	0.0526	0.0773
5701902090	0.0526	0.0773
5702101000	0.0447	0.0657
5702109010	0.0447	0.0657
5702109020	0.85	1.2487
5702109030	0.0447	0.0657
5702109090	0.0447	0.0657
5702201000	0.0447	0.0657
5702311000	0.0447	0.0657
5702312000	0.0895	0.1315
5702322000	0.0895	0.1315
5702391000	0.0895	0.1315
5702392010	0.8053	1.1831
5702392090	0.0447	0.0657
5702411000	0.0447	0.0657
5702412000	0.0447	0.0657
5702421000	0.0895	0.1315
5702422020	0.0895	0.1315

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5702422080	0.0895	0.1315
5702491020	0.8947	1.3144
5702491080	0.8947	1.3144
5702492000	0.0895	0.1315
5702502000	0.0895	0.1315
5702504000	0.0447	0.0657
5702505200	0.0895	0.1315
5702505600	0.85	1.2487
5702912000	0.0447	0.0657
5702913000	0.0447	0.0657
5702914000	0.0447	0.0657
5702921000	0.0447	0.0657
5702929000	0.0447	0.0657
5702990500	0.8947	1.3144
5702991500	0.8947	1.3144
5703291000	0.0452	0.0664
5703292010	0.0452	0.0664
5703391000	0.0452	0.0664
5703900000	0.3615	0.5311
5705001000	0.0452	0.0664
5705002005	0.0452	0.0664
5705002015	0.0452	0.0664
5705002020	0.7682	1.1286
5705002030	0.0452	0.0664
5705002090	0.1808	0.2656
5801210000	0.9767	1.4349
5801221000	0.9767	1.4349
5801229000	0.9767	1.4349
5801230000	0.9767	1.4349
5801260010	0.7596	1.1159
5801260020	0.7596	1.1159
5801271000	0.9767	1.4349
5801275010	1.0852	1.5943
5801275020	0.9767	1.4349
5801310000	0.217	0.3188
5801320000	0.217	0.3188
5801330000	0.217	0.3188
5801360010	0.217	0.3188
5801360020	0.217	0.3188
5802101000	1.0309	1.5145
5802109000	1.0309	1.5145
5802200020	0.1085	0.1594
5802200090	0.3256	0.4783
5802300030	0.4341	0.6377
5802300090	0.1085	0.1594
5803001000	1.0852	1.5943
5803002000	0.8681	1.2753
5803003000	0.8681	1.2753
5803005000	0.3256	0.4783
5804101000	0.4341	0.6377
5804109090	0.2193	0.3222
5804291000	0.8772	1.2887
5804300020	0.3256	0.4783
5805001000	0.1085	0.1594
5805003000	1.0852	1.5943
5806101000	0.8681	1.2753
5806103090	0.217	0.3188
5806200010	0.2577	0.3786
5806200090	0.2577	0.3786
5806310000	0.8681	1.2753
5806393080	0.217	0.3188
5806400000	0.0814	0.1196
5807100510	0.8681	1.2753
5807102010	0.8681	1.2753
5807900510	0.8681	1.2753
5807902010	0.8681	1.2753
5808104000	0.217	0.3188
5808107000	0.217	0.3188
5808900010	0.4341	0.6377
5810100000	0.3256	0.4783

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5810910010	0.7596	1.1159
5810910020	0.7596	1.1159
5810921000	0.217	0.3188
5810929030	0.217	0.3188
5810929050	0.217	0.3188
5810929080	0.217	0.3188
5811002000	0.8681	1.2753
5901102000	0.5643	0.8290
5901904000	0.8139	1.1957
5903101000	0.4341	0.6377
5903103000	0.1085	0.1594
5903201000	0.4341	0.6377
5903203090	0.1085	0.1594
5903901000	0.4341	0.6377
5903903090	0.1085	0.1594
5904901000	0.0326	0.0479
5905001000	0.1085	0.1594
5905009000	0.1085	0.1594
5906100000	0.4341	0.6377
5906911000	0.4341	0.6377
5906913000	0.1085	0.1594
5906991000	0.4341	0.6377
5906993000	0.1085	0.1594
5907002500	0.3798	0.5580
5907003500	0.3798	0.5580
5907008090	0.3798	0.5580
5908000000	0.7813	1.1478
5909001000	0.6837	1.0044
5909002000	0.4883	0.7174
5910001010	0.3798	0.5580
5910001020	0.3798	0.5580
5910001030	0.3798	0.5580
5910001060	0.3798	0.5580
5910001070	0.3798	0.5580
5910001090	0.6837	1.0044
5910009000	0.5697	0.8369
5911101000	0.1736	0.2550
5911102000	0.0434	0.0638
5911201000	0.4341	0.6377
5911310010	0.4341	0.6377
5911310020	0.4341	0.6377
5911310030	0.4341	0.6377
5911310080	0.4341	0.6377
5911320010	0.4341	0.6377
5911320020	0.4341	0.6377
5911320030	0.4341	0.6377
5911320080	0.4341	0.6377
5911400100	0.5426	0.7971
5911900040	0.3158	0.4639
5911900080	0.2105	0.3092
6001106000	0.1096	0.1610
6001210000	0.9868	1.4497
6001220000	0.1096	0.1610
6001290000	0.1096	0.1610
6001910010	0.8772	1.2887
6001910020	0.8772	1.2887
6001920010	0.0548	0.0805
6001920020	0.0548	0.0805
6001920030	0.0548	0.0805
6001920040	0.0548	0.0805
6001999000	0.1096	0.1610
6002404000	0.7401	1.0873
6002408020	0.1974	0.2900
6002408080	0.1974	0.2900
6002904000	0.7895	1.1599
6002908020	0.1974	0.2900
6002908080	0.1974	0.2900
6003201000	0.8772	1.2887
6003203000	0.8772	1.2887
6003301000	0.1096	0.1610

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6003306000	0.1096	0.1610
6003401000	0.1096	0.1610
6003406000	0.1096	0.1610
6003901000	0.1096	0.1610
6003909000	0.1096	0.1610
6004100010	0.2961	0.4350
6004100025	0.2961	0.4350
6004100085	0.2961	0.4350
6004902010	0.2961	0.4350
6004902025	0.2961	0.4350
6004902085	0.2961	0.4350
6004909000	0.2961	0.4350
6005210000	0.7127	1.0470
6005220000	0.7127	1.0470
6005230000	0.7127	1.0470
6005240000	0.7127	1.0470
6005360010	0.1096	0.1610
6005360080	0.1096	0.1610
6005370010	0.1096	0.1610
6005370080	0.1096	0.1610
6005380010	0.1096	0.1610
6005380080	0.1096	0.1610
6005390010	0.1096	0.1610
6005390080	0.1096	0.1610
6005410010	0.1096	0.1610
6005410080	0.1096	0.1610
6005420010	0.1096	0.1610
6005420080	0.1096	0.1610
6005430010	0.1096	0.1610
6005430080	0.1096	0.1610
6005440010	0.1096	0.1610
6005440080	0.1096	0.1610
6005909000	0.1096	0.1610
6006211000	1.0965	1.6109
6006219020	0.7675	1.1275
6006219080	0.7675	1.1275
6006221000	1.0965	1.6109
6006229020	0.7675	1.1275
6006229080	0.7675	1.1275
6006231000	1.0965	1.6109
6006239020	0.7675	1.1275
6006239080	0.7675	1.1275
6006241000	1.0965	1.6109
6006249020	0.7675	1.1275
6006249080	0.7675	1.1275
6006310020	0.3289	0.4832
6006310040	0.3289	0.4832
6006310060	0.3289	0.4832
6006310080	0.3289	0.4832
6006320020	0.3289	0.4832
6006320040	0.3289	0.4832
6006320060	0.3289	0.4832
6006320080	0.3289	0.4832
6006330020	0.3289	0.4832
6006330040	0.3289	0.4832
6006330060	0.3289	0.4832
6006330080	0.3289	0.4832
6006340020	0.3289	0.4832
6006340040	0.3289	0.4832
6006340060	0.3289	0.4832
6006340080	0.3289	0.4832
6006410025	0.3289	0.4832
6006410085	0.3289	0.4832
6006420025	0.3289	0.4832
6006420085	0.3289	0.4832
6006430025	0.3289	0.4832
6006430085	0.3289	0.4832
6006440025	0.3289	0.4832
6006440085	0.3289	0.4832
6006909000	0.1096	0.1610

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6101200010	1.02	1.4985
6101200020	1.02	1.4985
6101301000	0.2072	0.3044
6101900500	0.1912	0.2809
6101909010	0.5737	0.8428
6101909030	0.51	0.7492
6101909060	0.255	0.3746
6102100000	0.255	0.3746
6102200010	0.9562	1.4048
6102200020	0.9562	1.4048
6102300500	0.1785	0.2622
6102909005	0.5737	0.8428
6102909015	0.4462	0.6555
6102909030	0.255	0.3746
6103101000	0.0637	0.0936
6103104000	0.1218	0.1789
6103105000	0.1218	0.1789
6103106010	0.8528	1.2528
6103106015	0.8528	1.2528
6103106030	0.8528	1.2528
6103109010	0.5482	0.8054
6103109020	0.5482	0.8054
6103109030	0.5482	0.8054
6103109040	0.1218	0.1789
6103109050	0.1218	0.1789
6103109080	0.1827	0.2684
6103320000	0.8722	1.2813
6103398010	0.7476	1.0983
6103398030	0.3738	0.5491
6103398060	0.2492	0.3661
6103411010	0.3576	0.5254
6103411020	0.3576	0.5254
6103412000	0.3576	0.5254
6103421020	0.8343	1.2257
6103421035	0.8343	1.2257
6103421040	0.8343	1.2257
6103421050	0.8343	1.2257
6103421065	0.8343	1.2257
6103421070	0.8343	1.2257
6103422010	0.8343	1.2257
6103422015	0.8343	1.2257
6103422025	0.8343	1.2257
6103431520	0.2384	0.3502
6103431535	0.2384	0.3502
6103431540	0.2384	0.3502
6103431550	0.2384	0.3502
6103431565	0.2384	0.3502
6103431570	0.2384	0.3502
6103432020	0.2384	0.3502
6103432025	0.2384	0.3502
6103491020	0.2437	0.3580
6103491060	0.2437	0.3580
6103492000	0.2437	0.3580
6103498010	0.5482	0.8054
6103498014	0.3655	0.5370
6103498024	0.2437	0.3580
6103498026	0.2437	0.3580
6103498034	0.5482	0.8054
6103498038	0.3655	0.5370
6103498060	0.2437	0.3580
6104196010	0.8722	1.2813
6104196020	0.8722	1.2813
6104196030	0.8722	1.2813
6104196040	0.8722	1.2813
6104198010	0.5607	0.8237
6104198020	0.5607	0.8237
6104198030	0.5607	0.8237
6104198040	0.5607	0.8237
6104198060	0.3738	0.5491
6104198090	0.2492	0.3661

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6104220010	0.8528	1.2528
6104220030	0.8528	1.2528
6104220040	0.8528	1.2528
6104220050	0.8528	1.2528
6104220060	0.8528	1.2528
6104220080	0.731	1.0739
6104220090	0.8528	1.2528
6104320000	0.8722	1.2813
6104392010	0.5607	0.8237
6104392030	0.3738	0.5491
6104392090	0.2492	0.3661
6104420010	0.8528	1.2528
6104420020	0.8528	1.2528
6104499010	0.5482	0.8054
6104499030	0.3655	0.5370
6104499060	0.2437	0.3580
6104520010	0.8822	1.2960
6104520020	0.8822	1.2960
6104598010	0.5672	0.8333
6104598030	0.3781	0.5555
6104598090	0.2521	0.3704
6104610010	0.2384	0.3502
6104610020	0.2384	0.3502
6104610030	0.2384	0.3502
6104621010	0.7509	1.1031
6104621020	0.8343	1.2257
6104621030	0.8343	1.2257
6104622006	0.7151	1.0506
6104622011	0.8343	1.2257
6104622016	0.7151	1.0506
6104622021	0.8343	1.2257
6104622026	0.7151	1.0506
6104622028	0.8343	1.2257
6104622030	0.8343	1.2257
6104622050	0.8343	1.2257
6104622060	0.8343	1.2257
6104631020	0.2384	0.3502
6104631030	0.2384	0.3502
6104632006	0.8343	1.2257
6104632011	0.8343	1.2257
6104632016	0.7151	1.0506
6104632021	0.8343	1.2257
6104632026	0.3576	0.5254
6104632028	0.3576	0.5254
6104632030	0.3576	0.5254
6104632050	0.7151	1.0506
6104632060	0.3576	0.5254
6104691000	0.3655	0.5370
6104692030	0.3655	0.5370
6104692060	0.3655	0.5370
6104698010	0.5482	0.8054
6104698014	0.3655	0.5370
6104698020	0.2437	0.3580
6104698022	0.5482	0.8054
6104698026	0.3655	0.5370
6104698038	0.2437	0.3580
6104698040	0.2437	0.3580
6105100010	0.9332	1.3710
6105100020	0.9332	1.3710
6105100030	0.9332	1.3710
6105202010	0.2916	0.4284
6105202020	0.2916	0.4284
6105202030	0.2916	0.4284
6105908010	0.5249	0.7711
6105908030	0.3499	0.5140
6105908060	0.2333	0.3427
6106100010	0.9332	1.3710
6106100020	0.9332	1.3710
6106100030	0.9332	1.3710
6106202010	0.2916	0.4284

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6106202020	0.4666	0.6855
6106202030	0.2916	0.4284
6106901500	0.0583	0.0856
6106902510	0.5249	0.7711
6106902530	0.3499	0.5140
6106902550	0.2916	0.4284
6106903010	0.5249	0.7711
6106903030	0.3499	0.5140
6106903040	0.2916	0.4284
6107110010	1.0727	1.5759
6107110020	1.0727	1.5759
6107120010	0.4767	0.7003
6107120020	0.4767	0.7003
6107191000	0.1192	0.1751
6107210010	0.8343	1.2257
6107210020	0.7151	1.0506
6107220010	0.3576	0.5254
6107220015	0.1192	0.1751
6107220025	0.2384	0.3502
6107299000	0.1788	0.2627
6107910030	1.1918	1.7509
6107910040	1.1918	1.7509
6107910090	0.9535	1.4008
6107991030	0.3576	0.5254
6107991040	0.3576	0.5254
6107991090	0.3576	0.5254
6107999000	0.1192	0.1751
6108199010	1.0611	1.5589
6108199030	0.2358	0.3464
6108210010	1.179	1.7321
6108210020	1.179	1.7321
6108299000	0.3537	0.5196
6108310010	1.0611	1.5589
6108310020	1.0611	1.5589
6108320010	0.2358	0.3464
6108320015	0.2358	0.3464
6108320025	0.2358	0.3464
6108398000	0.3537	0.5196
6108910005	1.179	1.7321
6108910015	1.179	1.7321
6108910025	1.179	1.7321
6108910030	1.179	1.7321
6108910040	1.179	1.7321
6108920005	0.2358	0.3464
6108920015	0.2358	0.3464
6108920025	0.2358	0.3464
6108920030	0.2358	0.3464
6108920040	0.2358	0.3464
6108999000	0.3537	0.5196
6109100004	1.0022	1.4723
6109100007	1.0022	1.4723
6109100011	1.0022	1.4723
6109100012	1.0022	1.4723
6109100014	1.0022	1.4723
6109100018	1.0022	1.4723
6109100023	1.0022	1.4723
6109100027	1.0022	1.4723
6109100037	1.0022	1.4723
6109100040	1.0022	1.4723
6109100045	1.0022	1.4723
6109100060	1.0022	1.4723
6109100065	1.0022	1.4723
6109100070	1.0022	1.4723
6109901007	0.2948	0.4331
6109901009	0.2948	0.4331
6109901013	0.2948	0.4331
6109901025	0.2948	0.4331
6109901047	0.2948	0.4331
6109901049	0.2948	0.4331
6109901050	0.2948	0.4331

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6109901060	0.2948	0.4331
6109901065	0.2948	0.4331
6109901070	0.2948	0.4331
6109901075	0.2948	0.4331
6109901090	0.2948	0.4331
6109908010	0.3499	0.5140
6109908030	0.2333	0.3427
6110201010	0.7476	1.0983
6110201020	0.7476	1.0983
6110201022	0.7476	1.0983
6110201024	0.7476	1.0983
6110201026	0.7476	1.0983
6110201029	0.7476	1.0983
6110201031	0.7476	1.0983
6110201033	0.7476	1.0983
6110202005	1.1214	1.6474
6110202010	1.1214	1.6474
6110202015	1.1214	1.6474
6110202020	1.1214	1.6474
6110202025	1.1214	1.6474
6110202030	1.1214	1.6474
6110202035	1.1214	1.6474
6110202041	1.0965	1.6109
6110202044	1.0965	1.6109
6110202046	1.0965	1.6109
6110202049	1.0965	1.6109
6110202067	1.0965	1.6109
6110202069	1.0965	1.6109
6110202077	1.0965	1.6109
6110202079	1.0965	1.6109
6110909010	0.5607	0.8237
6110909012	0.1246	0.1830
6110909014	0.3738	0.5491
6110909026	0.5607	0.8237
6110909028	0.1869	0.2746
6110909030	0.3738	0.5491
6110909044	0.5607	0.8237
6110909046	0.5607	0.8237
6110909052	0.3738	0.5491
6110909054	0.3738	0.5491
6110909064	0.2492	0.3661
6110909066	0.2492	0.3661
6110909067	0.5607	0.8237
6110909069	0.5607	0.8237
6110909071	0.5607	0.8237
6110909073	0.5607	0.8237
6110909079	0.3738	0.5491
6110909080	0.3738	0.5491
6110909081	0.3738	0.5491
6110909082	0.3738	0.5491
6110909088	0.2492	0.3661
6110909090	0.2492	0.3661
6111201000	1.1918	1.7509
6111202000	1.1918	1.7509
6111203000	0.9535	1.4008
6111204000	0.9535	1.4008
6111205000	0.9535	1.4008
6111206010	0.9535	1.4008
6111206020	0.9535	1.4008
6111206030	0.9535	1.4008
6111206050	0.9535	1.4008
6111206070	0.9535	1.4008
6111301000	0.2384	0.3502
6111302000	0.2384	0.3502
6111303000	0.2384	0.3502
6111304000	0.2384	0.3502
6111305010	0.2384	0.3502
6111305015	0.2384	0.3502
6111305020	0.2384	0.3502
6111305030	0.2384	0.3502

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6111305050	0.2384	0.3502
6111305070	0.2384	0.3502
6111901000	0.2384	0.3502
6111902000	0.2384	0.3502
6111903000	0.2384	0.3502
6111904000	0.2384	0.3502
6111905010	0.2384	0.3502
6111905020	0.2384	0.3502
6111905030	0.2384	0.3502
6111905050	0.2384	0.3502
6111905070	0.2384	0.3502
6112110010	0.9535	1.4008
6112110020	0.9535	1.4008
6112110030	0.9535	1.4008
6112110040	0.9535	1.4008
6112110050	0.9535	1.4008
6112110060	0.9535	1.4008
6112120010	0.2384	0.3502
6112120020	0.2384	0.3502
6112120030	0.2384	0.3502
6112120040	0.2384	0.3502
6112120050	0.2384	0.3502
6112120060	0.2384	0.3502
6112191010	0.2492	0.3661
6112191020	0.2492	0.3661
6112191030	0.2492	0.3661
6112191040	0.2492	0.3661
6112191050	0.2492	0.3661
6112191060	0.2492	0.3661
6112201060	0.2492	0.3661
6112201070	0.2492	0.3661
6112201080	0.2492	0.3661
6112201090	0.2492	0.3661
6112202010	0.8722	1.2813
6112202020	0.3738	0.5491
6112202030	0.2492	0.3661
6112310010	0.1192	0.1751
6112310020	0.1192	0.1751
6112390010	1.0727	1.5759
6112410010	0.1192	0.1751
6112410020	0.1192	0.1751
6112410030	0.1192	0.1751
6112410040	0.1192	0.1751
6112490010	0.8939	1.3132
6113001005	0.1246	0.1830
6113001010	0.1246	0.1830
6113001012	0.1246	0.1830
6113009015	0.3489	0.5126
6113009020	0.3489	0.5126
6113009038	0.3489	0.5126
6113009042	0.3489	0.5126
6113009055	0.3489	0.5126
6113009060	0.3489	0.5126
6113009074	0.3489	0.5126
6113009082	0.3489	0.5126
6114200005	0.9747	1.4319
6114200010	0.9747	1.4319
6114200015	0.8528	1.2528
6114200020	0.8528	1.2528
6114200035	0.8528	1.2528
6114200040	0.8528	1.2528
6114200042	0.3655	0.5370
6114200044	0.8528	1.2528
6114200046	0.8528	1.2528
6114200048	0.8528	1.2528
6114200052	0.8528	1.2528
6114200055	0.8528	1.2528
6114200060	0.8528	1.2528
6114301010	0.2437	0.3580
6114301020	0.2437	0.3580

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6114302060	0.1218	0.1789
6114303014	0.2437	0.3580
6114303020	0.2437	0.3580
6114303030	0.2437	0.3580
6114303042	0.2437	0.3580
6114303044	0.2437	0.3580
6114303052	0.2437	0.3580
6114303054	0.2437	0.3580
6114303060	0.2437	0.3580
6114303070	0.2437	0.3580
6114909045	0.5482	0.8054
6114909055	0.3655	0.5370
6114909070	0.3655	0.5370
6115100500	0.4386	0.6443
6115101510	1.0965	1.6109
6115103000	0.9868	1.4497
6115106000	0.1096	0.1610
6115298010	1.0965	1.6109
6115309030	0.7675	1.1275
6115956000	0.9868	1.4497
6115959000	0.9868	1.4497
6115966020	0.2193	0.3222
6115991420	0.2193	0.3222
6115991920	0.2193	0.3222
6115999000	0.1096	0.1610
6116101300	0.3463	0.5087
6116101720	0.8079	1.1869
6116104810	0.4444	0.6529
6116105510	0.6464	0.9496
6116107510	0.6464	0.9496
6116109500	0.1616	0.2374
6116920500	0.8079	1.1869
6116920800	0.8079	1.1869
6116926410	1.0388	1.5261
6116926420	1.0388	1.5261
6116926430	1.1542	1.6956
6116926440	1.0388	1.5261
6116927450	1.0388	1.5261
6116927460	1.1542	1.6956
6116927470	1.0388	1.5261
6116928800	1.0388	1.5261
6116929400	1.0388	1.5261
6116938800	0.1154	0.1695
6116939400	0.1154	0.1695
6116994800	0.1154	0.1695
6116995400	0.1154	0.1695
6116999510	0.4617	0.6783
6116999530	0.3463	0.5087
6117106010	0.9234	1.3566
6117106020	0.2308	0.3391
6117808500	0.9234	1.3566
6117808710	1.1542	1.6956
6117808770	0.1731	0.2543
6117809510	0.9234	1.3566
6117809540	0.3463	0.5087
6117809570	0.1731	0.2543
6117909003	1.1542	1.6956
6117909015	0.2308	0.3391
6117909020	1.1542	1.6956
6117909040	1.1542	1.6956
6117909060	1.1542	1.6956
6117909080	1.1542	1.6956
6201301200	0.8981	1.3194
6201302010	1.0602	1.5575
6201302020	1.0602	1.5575
6201302025	1.2473	1.8324
6201302035	1.2473	1.8324
6201302050	0.8108	1.1911
6201302060	0.8108	1.1911
6201303000	0.6486	0.9529

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6201304000	0.8108	1.1911
6201305005	0.8108	1.1911
6201305010	0.8108	1.1911
6201305021	1.2473	1.8324
6201305031	1.2473	1.8324
6201305041	1.2473	1.8324
6201305051	0.8108	1.1911
6201305061	0.8108	1.1911
6201306000	0.6486	0.9529
6201307000	0.8108	1.1911
6201308005	0.8108	1.1911
6201308010	0.8108	1.1911
6201308021	1.2473	1.8324
6201308031	1.2473	1.8324
6201308041	1.2473	1.8324
6201308051	0.8108	1.1911
6201308061	0.8108	1.1911
6201402015	0.2495	0.3665
6201402020	0.2495	0.3665
6201402030	0.3118	0.4581
6201402040	0.3118	0.4581
6201404500	0.3118	0.4581
6201405011	0.3118	0.4581
6201405021	0.3118	0.4581
6201407000	0.3118	0.4581
6201407511	0.3118	0.4581
6201407521	0.3118	0.4581
6201902910	0.5613	0.8246
6201902930	0.3742	0.5497
6201902960	0.3742	0.5497
6201904910	0.5613	0.8246
6201904930	0.3742	0.5497
6201904960	0.3742	0.5497
6201906910	0.5613	0.8246
6201906930	0.3742	0.5497
6201906960	0.3742	0.5497
6202301200	0.8879	1.3044
6202302010	1.0482	1.5399
6202302020	1.0482	1.5399
6202302025	1.2332	1.8117
6202302035	1.2332	1.8117
6202302050	0.8016	1.1776
6202302060	0.8016	1.1776
6202303000	0.9865	1.4493
6202304000	0.9865	1.4493
6202305010	0.9865	1.4493
6202305020	0.9865	1.4493
6202305026	1.2332	1.8117
6202305031	1.2332	1.8117
6202305061	0.9865	1.4493
6202305071	0.9865	1.4493
6202306000	0.9865	1.4493
6202307000	0.9865	1.4493
6202308010	0.9865	1.4493
6202308020	0.9865	1.4493
6202308026	1.2332	1.8117
6202308031	1.2332	1.8117
6202308061	0.9865	1.4493
6202308071	0.9865	1.4493
6202402005	0.2524	0.3708
6202402010	0.2524	0.3708
6202402020	0.3155	0.4635
6202402030	0.3155	0.4635
6202402500	0.2960	0.4349
6202403510	0.2466	0.3623
6202403520	0.2466	0.3623
6202405011	0.2466	0.3623
6202405021	0.2466	0.3623
6202405500	0.2960	0.4349
6202406010	0.2466	0.3623

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6202406020	0.2466	0.3623
6202407511	0.2466	0.3623
6202407521	0.2466	0.3623
6202902910	0.5678	0.8342
6202902930	0.3786	0.5562
6202902960	0.2524	0.3708
6202904911	0.5549	0.8152
6202904931	0.3700	0.5436
6202904961	0.2466	0.3623
6202906911	0.5549	0.8152
6202906931	0.3700	0.5436
6202906961	0.2466	0.3623
6203122010	0.1233	0.1811
6203122020	0.1233	0.1811
6203191010	0.9865	1.4493
6203191020	0.9865	1.4493
6203191030	0.9865	1.4493
6203199010	0.5549	0.8152
6203199020	0.5549	0.8152
6203199030	0.5549	0.8152
6203199050	0.37	0.5436
6203199080	0.2466	0.3623
6203221000	1.2332	1.8117
6203321000	0.6782	0.9963
6203322010	1.1715	1.7211
6203322020	1.1715	1.7211
6203322030	1.1715	1.7211
6203322040	1.1715	1.7211
6203322050	1.1715	1.7211
6203332010	0.1233	0.1811
6203332020	0.1233	0.1811
6203392010	0.1233	0.1811
6203392020	0.1233	0.1811
6203399010	0.5549	0.8152
6203399030	0.37	0.5436
6203399060	0.2466	0.3623
6203420300	1.0616	1.5596
6203420505	0.7077	1.0397
6203420510	0.9436	1.3862
6203420525	0.9436	1.3862
6203420550	0.9436	1.3862
6203420590	0.9436	1.3862
6203420703	1.0616	1.5596
6203420706	1.1796	1.7330
6203420711	1.1796	1.7330
6203420716	0.9436	1.3862
6203420721	1.1796	1.7330
6203420726	1.1796	1.7330
6203420731	1.1796	1.7330
6203420736	1.1796	1.7330
6203420741	0.9436	1.3862
6203420746	0.9436	1.3862
6203420751	0.8752	1.2858
6203420756	0.8752	1.2858
6203420761	0.8752	1.2858
6203421700	1.0616	1.5596
6203422505	0.7077	1.0397
6203422510	0.9436	1.3862
6203422525	0.9436	1.3862
6203422550	0.9436	1.3862
6203422590	0.9436	1.3862
6203424503	1.0616	1.5596
6203424506	1.1796	1.7330
6203424511	1.1796	1.7330
6203424516	0.9436	1.3862
6203424521	1.1796	1.7330
6203424526	1.1796	1.7330
6203424531	1.1796	1.7330
6203424536	1.1796	1.7330
6203424541	0.9436	1.3862

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6203424546	0.9436	1.3862
6203424551	0.8752	1.2858
6203424556	0.8752	1.2858
6203424561	0.8752	1.2858
6203430100	0.1887	0.2772
6203430300	0.118	0.1734
6203430505	0.118	0.1734
6203430510	0.2359	0.3466
6203430525	0.2359	0.3466
6203430550	0.2359	0.3466
6203430590	0.2359	0.3466
6203431110	0.059	0.0867
6203431190	0.059	0.0867
6203431310	0.1167	0.1714
6203431315	0.1167	0.1714
6203431320	0.1167	0.1714
6203431330	0.1167	0.1714
6203431335	0.1167	0.1714
6203431340	0.1167	0.1714
6203434500	0.1887	0.2772
6203435500	0.118	0.1734
6203436005	0.118	0.1734
6203436010	0.2359	0.3466
6203436025	0.2359	0.3466
6203436050	0.2359	0.3466
6203436090	0.2359	0.3466
6203436500	0.4128	0.6064
6203437510	0.059	0.0867
6203437590	0.059	0.0867
6203439010	0.1167	0.1714
6203439015	0.1167	0.1714
6203439020	0.1167	0.1714
6203439030	0.1167	0.1714
6203439035	0.1167	0.1714
6203439040	0.1167	0.1714
6203490105	0.118	0.1734
6203490110	0.2359	0.3466
6203490125	0.2359	0.3466
6203490150	0.2359	0.3466
6203490190	0.2359	0.3466
6203490515	0.2359	0.3466
6203490520	0.2359	0.3466
6203490530	0.118	0.1734
6203490545	0.118	0.1734
6203490550	0.118	0.1734
6203490560	0.118	0.1734
6203490920	0.5308	0.7798
6203490930	0.3539	0.5199
6203490945	0.2359	0.3466
6203492505	0.118	0.1734
6203492510	0.2359	0.3466
6203492525	0.2359	0.3466
6203492550	0.2359	0.3466
6203492590	0.2359	0.3466
6203493500	0.4128	0.6064
6203495015	0.2359	0.3466
6203495020	0.2359	0.3466
6203495030	0.118	0.1734
6203495045	0.118	0.1734
6203495050	0.118	0.1734
6203495060	0.118	0.1734
6203499020	0.5308	0.7798
6203499030	0.3539	0.5199
6203499045	0.2359	0.3466
6204110000	0.0617	0.0906
6204120010	0.9865	1.4493
6204120020	0.9865	1.4493
6204120030	0.9865	1.4493
6204120040	0.9865	1.4493
6204132010	0.1233	0.1811

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204132020	0.1233	0.1811
6204192000	0.1233	0.1811
6204198010	0.5549	0.8152
6204198020	0.5549	0.8152
6204198030	0.5549	0.8152
6204198040	0.5549	0.8152
6204198060	0.3083	0.4529
6204198090	0.2466	0.3623
6204221000	1.2332	1.8117
6204223010	0.9865	1.4493
6204223030	0.9865	1.4493
6204223040	0.9865	1.4493
6204223050	0.9865	1.4493
6204223060	0.9865	1.4493
6204223065	0.9865	1.4493
6204223070	0.9865	1.4493
6204294010	0.5549	0.8152
6204294022	0.5549	0.8152
6204294034	0.5549	0.8152
6204294070	0.5549	0.8152
6204294082	0.5549	0.8152
6204321000	0.6782	0.9963
6204322010	1.1715	1.7211
6204322020	1.1715	1.7211
6204322030	0.9865	1.4493
6204322040	0.9865	1.4493
6204398010	0.5549	0.8152
6204398030	0.3083	0.4529
6204412010	0.0603	0.0886
6204412020	0.0603	0.0886
6204421000	1.2058	1.7714
6204422000	0.6632	0.9743
6204423010	1.2058	1.7714
6204423020	1.2058	1.7714
6204423030	0.9043	1.3285
6204423040	0.9043	1.3285
6204423050	0.9043	1.3285
6204423060	0.9043	1.3285
6204431000	0.4823	0.7085
6204432000	0.0603	0.0886
6204442000	0.4316	0.6341
6204495010	0.5549	0.8152
6204495030	0.2466	0.3623
6204510010	0.0631	0.0927
6204510020	0.0631	0.0927
6204521000	1.2618	1.8537
6204522010	1.1988	1.7612
6204522020	1.1988	1.7612
6204522030	1.1988	1.7612
6204522040	1.1988	1.7612
6204522070	1.0095	1.4831
6204522080	1.0095	1.4831
6204531000	0.4416	0.6488
6204532010	0.0631	0.0927
6204532020	0.0631	0.0927
6204533010	0.2524	0.3708
6204533020	0.2524	0.3708
6204591000	0.4416	0.6488
6204594010	0.5678	0.8342
6204594030	0.2524	0.3708
6204594060	0.2524	0.3708
6204610510	0.059	0.0867
6204610520	0.059	0.0867
6204611510	0.059	0.0867
6204611520	0.059	0.0867
6204611530	0.059	0.0867
6204611540	0.118	0.1734
6204616010	0.059	0.0867
6204616020	0.059	0.0867
6204618010	0.059	0.0867

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204618020	0.059	0.0867
6204618030	0.059	0.0867
6204618040	0.118	0.1734
6204620300	0.8681	1.2753
6204620505	0.7077	1.0397
6204620510	0.9436	1.3862
6204620525	0.9436	1.3862
6204620550	0.9436	1.3862
6204621503	1.0616	1.5596
6204621506	1.1796	1.7330
6204621511	1.1796	1.7330
6204621521	0.9436	1.3862
6204621526	1.1796	1.7330
6204621531	1.1796	1.7330
6204621536	1.1796	1.7330
6204621541	1.1796	1.7330
6204621546	0.9436	1.3862
6204621551	0.9436	1.3862
6204621556	0.9335	1.3714
6204621561	0.9335	1.3714
6204621566	0.9335	1.3714
6204625000	0.8681	1.2753
6204626005	0.7077	1.0397
6204626010	0.9436	1.3862
6204626025	0.9436	1.3862
6204626050	0.9436	1.3862
6204627000	1.1796	1.7330
6204628003	1.0616	1.5596
6204628006	1.1796	1.7330
6204628011	1.1796	1.7330
6204628021	0.9436	1.3862
6204628026	1.1796	1.7330
6204628031	1.1796	1.7330
6204628036	1.1796	1.7330
6204628041	1.1796	1.7330
6204628046	0.9436	1.3862
6204628051	0.9436	1.3862
6204628056	0.9335	1.3714
6204628061	0.9335	1.3714
6204628066	0.9335	1.3714
6204630100	0.2019	0.2966
6204630200	0.118	0.1734
6204630305	0.118	0.1734
6204630310	0.2359	0.3466
6204630325	0.2359	0.3466
6204630350	0.2359	0.3466
6204630810	0.059	0.0867
6204630820	0.059	0.0867
6204630910	0.0603	0.0886
6204630990	0.0603	0.0886
6204631110	0.2412	0.3543
6204631125	0.2412	0.3543
6204631130	0.2412	0.3543
6204631132	0.2309	0.3392
6204631135	0.2309	0.3392
6204631140	0.2309	0.3392
6204635000	0.2019	0.2966
6204635500	0.118	0.1734
6204636005	0.118	0.1734
6204636010	0.2359	0.3466
6204636025	0.2359	0.3466
6204636050	0.2359	0.3466
6204636500	0.4718	0.6931
6204637010	0.059	0.0867
6204637020	0.059	0.0867
6204637510	0.0603	0.0886
6204637590	0.0603	0.0886
6204639010	0.2412	0.3543
6204639025	0.2412	0.3543
6204639030	0.2412	0.3543

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204639032	0.2309	0.3392
6204639035	0.2309	0.3392
6204639040	0.2309	0.3392
6204690105	0.118	0.1734
6204690110	0.2359	0.3466
6204690125	0.2359	0.3466
6204690150	0.2359	0.3466
6204690210	0.059	0.0867
6204690220	0.059	0.0867
6204690230	0.059	0.0867
6204690310	0.2359	0.3466
6204690320	0.2359	0.3466
6204690330	0.2359	0.3466
6204690340	0.2309	0.3392
6204690350	0.2309	0.3392
6204690360	0.2309	0.3392
6204690510	0.5308	0.7798
6204690530	0.2359	0.3466
6204690570	0.3539	0.5199
6204690610	0.5308	0.7798
6204690630	0.2359	0.3466
6204690644	0.2359	0.3466
6204690646	0.2359	0.3466
6204690650	0.3539	0.5199
6204691505	0.118	0.1734
6204691510	0.2359	0.3466
6204691525	0.2359	0.3466
6204691550	0.2359	0.3466
6204692210	0.059	0.0867
6204692220	0.059	0.0867
6204692230	0.059	0.0867
6204692810	0.2359	0.3466
6204692820	0.2359	0.3466
6204692830	0.2359	0.3466
6204692840	0.2309	0.3392
6204692850	0.2309	0.3392
6204692860	0.2309	0.3392
6204696510	0.5308	0.7798
6204696530	0.2359	0.3466
6204696570	0.3539	0.5199
6204698010	0.5308	0.7798
6204698030	0.2359	0.3466
6204698044	0.2359	0.3466
6204698046	0.2359	0.3466
6204698050	0.3539	0.5199
6205201000	1.1796	1.7330
6205202003	0.9436	1.3862
6205202016	0.9436	1.3862
6205202021	0.9436	1.3862
6205202026	0.9436	1.3862
6205202031	0.9436	1.3862
6205202036	1.0616	1.5596
6205202041	1.0616	1.5596
6205202044	1.0616	1.5596
6205202047	0.9436	1.3862
6205202051	0.9436	1.3862
6205202056	0.9436	1.3862
6205202061	0.9436	1.3862
6205202066	0.9436	1.3862
6205202071	0.9436	1.3862
6205202076	0.9436	1.3862
6205301000	0.4128	0.6064
6205302010	0.2949	0.4332
6205302020	0.2949	0.4332
6205302030	0.2949	0.4332
6205302040	0.2949	0.4332
6205302050	0.2949	0.4332
6205302055	0.2949	0.4332
6205302060	0.2949	0.4332
6205302070	0.2949	0.4332

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6205302075	0.2949	0.4332
6205302080	0.2949	0.4332
6205900710	0.118	0.1734
6205900720	0.118	0.1734
6205901000	0.2359	0.3466
6205903010	0.5308	0.7798
6205903030	0.2359	0.3466
6205903050	0.1769	0.2599
6205904010	0.5308	0.7798
6205904030	0.2359	0.3466
6205904040	0.2359	0.3466
6206100010	0.5308	0.7798
6206100030	0.2359	0.3466
6206100040	0.118	0.1734
6206100050	0.2359	0.3466
6206203010	0.059	0.0867
6206203020	0.059	0.0867
6206301000	1.1796	1.7330
6206302000	0.6488	0.9532
6206303003	0.9436	1.3862
6206303011	0.9436	1.3862
6206303021	0.9436	1.3862
6206303031	0.9436	1.3862
6206303041	0.9436	1.3862
6206303051	0.9436	1.3862
6206303061	0.9436	1.3862
6206401000	0.4128	0.6064
6206403010	0.2949	0.4332
6206403020	0.2949	0.4332
6206403025	0.2949	0.4332
6206403030	0.2949	0.4332
6206403040	0.2949	0.4332
6206403050	0.2949	0.4332
6206900010	0.5308	0.7798
6206900030	0.2359	0.3466
6206900040	0.1769	0.2599
6207110000	1.0281	1.5104
6207199010	0.3427	0.5035
6207199030	0.4569	0.6712
6207210010	1.0502	1.5428
6207210020	1.0502	1.5428
6207210030	1.0502	1.5428
6207210040	1.0502	1.5428
6207220000	0.3501	0.5143
6207291000	0.1167	0.1714
6207299030	0.1167	0.1714
6207911000	1.0852	1.5943
6207913010	1.0852	1.5943
6207913020	1.0852	1.5943
6207997520	0.2412	0.3543
6207998510	0.2412	0.3543
6207998520	0.2412	0.3543
6208110000	0.2412	0.3543
6208192000	1.0852	1.5943
6208195000	0.1206	0.1772
6208199000	0.2412	0.3543
6208210010	1.0026	1.4729
6208210020	1.0026	1.4729
6208210030	1.0026	1.4729
6208220000	0.118	0.1734
6208299030	0.2359	0.3466
6208911010	1.0852	1.5943
6208911020	1.0852	1.5943
6208913010	1.0852	1.5943
6208913020	1.0852	1.5943
6208920010	0.1206	0.1772
6208920020	0.1206	0.1772
6208920030	0.1206	0.1772
6208920040	0.1206	0.1772
6208992010	0.0603	0.0886

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6208992020	0.0603	0.0886
6208995010	0.2412	0.3543
6208995020	0.2412	0.3543
6208998010	0.2412	0.3543
6208998020	0.2412	0.3543
6209201000	1.0967	1.6112
6209202000	1.039	1.5264
6209203000	0.9236	1.3569
6209205030	0.9236	1.3569
6209205035	0.9236	1.3569
6209205045	0.9236	1.3569
6209205050	0.9236	1.3569
6209301000	0.2917	0.4285
6209302000	0.2917	0.4285
6209303010	0.2334	0.3429
6209303020	0.2334	0.3429
6209303030	0.2334	0.3429
6209303040	0.2334	0.3429
6209900500	0.1154	0.1695
6209901000	0.2917	0.4285
6209902000	0.2917	0.4285
6209903010	0.2917	0.4285
6209903015	0.2917	0.4285
6209903020	0.2917	0.4285
6209903030	0.2917	0.4285
6209903040	0.2917	0.4285
6210109010	0.217	0.3188
6210109040	0.217	0.3188
6210203000	0.0362	0.0532
6210205010	0.0844	0.1240
6210205020	0.4316	0.6341
6210205029	0.4316	0.6341
6210207000	0.1809	0.2658
6210209039	0.1110	0.1631
6210209049	0.1110	0.1631
6210303000	0.0362	0.0532
6210305010	0.0844	0.1240
6210305020	0.0863	0.1268
6210305029	0.0863	0.1268
6210307000	0.0362	0.0532
6210309020	0.422	0.6200
6210309039	0.1480	0.2174
6210309049	0.1480	0.2174
6210401500	0.037	0.0544
6210402531	0.0863	0.1268
6210402539	0.0863	0.1268
6210402540	0.4316	0.6341
6210402550	0.4316	0.6341
6210402800	0.111	0.1631
6210402933	0.111	0.1631
6210402945	0.111	0.1631
6210402960	0.111	0.1631
6210403500	0.037	0.0544
6210405531	0.0863	0.1268
6210405539	0.0863	0.1268
6210405540	0.4316	0.6341
6210405550	0.4316	0.6341
6210407500	0.111	0.1631
6210408033	0.111	0.1631
6210408045	0.111	0.1631
6210408060	0.111	0.1631
6210500300	0.037	0.0544
6210500531	0.0863	0.1268
6210500539	0.0863	0.1268
6210500540	0.0863	0.1268
6210500555	0.0863	0.1268
6210501200	0.4316	0.6341
6210502260	0.148	0.2174
6210502270	0.148	0.2174
6210502290	0.148	0.2174

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6210503500	0.037	0.0544
6210505531	0.0863	0.1268
6210505539	0.0863	0.1268
6210505540	0.0863	0.1268
6210505555	0.0863	0.1268
6210507500	0.4316	0.6341
6210508060	0.148	0.2174
6210508070	0.148	0.2174
6210508090	0.148	0.2174
6211111010	0.1206	0.1772
6211111020	0.1206	0.1772
6211118010	1.0852	1.5943
6211118020	1.0852	1.5943
6211118040	0.2412	0.3543
6211121010	0.0603	0.0886
6211121020	0.0603	0.0886
6211128010	1.0852	1.5943
6211128020	1.0852	1.5943
6211128030	0.6029	0.8857
6211200410	0.7717	1.1337
6211200420	0.0965	0.1418
6211200430	0.7717	1.1337
6211200440	0.0965	0.1418
6211200810	0.3858	0.5668
6211200820	0.3858	0.5668
6211201510	0.7615	1.1187
6211201515	0.2343	0.3442
6211201520	0.6443	0.9465
6211201525	0.2929	0.4303
6211201530	0.7615	1.1187
6211201535	0.3515	0.5164
6211201540	0.7615	1.1187
6211201545	0.2929	0.4303
6211201550	0.7615	1.1187
6211201555	0.41	0.6023
6211201560	0.7615	1.1187
6211201565	0.2343	0.3442
6211202400	0.1233	0.1811
6211202810	0.8016	1.1776
6211202820	0.2466	0.3623
6211202830	0.3083	0.4529
6211203400	0.1233	0.1811
6211203810	0.8016	1.1776
6211203820	0.2466	0.3623
6211203830	0.3083	0.4529
6211204400	0.1233	0.1811
6211204815	0.8016	1.1776
6211204835	0.2466	0.3623
6211204860	0.3083	0.4529
6211205400	0.1233	0.1811
6211205810	0.8016	1.1776
6211205820	0.2466	0.3623
6211205830	0.3083	0.4529
6211206400	0.1233	0.1811
6211206810	0.8016	1.1776
6211206820	0.2466	0.3623
6211206830	0.3083	0.4529
6211207400	0.1233	0.1811
6211207810	0.9249	1.3588
6211207820	0.2466	0.3623
6211207830	0.3083	0.4529
6211325003	0.6412	0.9420
6211325003	0.6412	0.9420
6211325007	0.8016	1.1776
6211325007	0.8016	1.1776
6211325010	0.9865	1.4493
6211325015	0.9865	1.4493
6211325025	0.9865	1.4493
6211325030	0.9249	1.3588
6211325040	0.9249	1.3588

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211325050	0.9249	1.3588
6211325060	0.9249	1.3588
6211325070	0.9249	1.3588
6211325075	0.9249	1.3588
6211325081	0.9249	1.3588
6211329003	0.6412	0.9420
6211329007	0.8016	1.1776
6211329010	0.9865	1.4493
6211329015	0.9865	1.4493
6211329025	0.9865	1.4493
6211329030	0.9249	1.3588
6211329040	0.9249	1.3588
6211329050	0.9249	1.3588
6211329060	0.9249	1.3588
6211329070	0.9249	1.3588
6211329075	0.9249	1.3588
6211329081	0.9249	1.3588
6211335003	0.0987	0.1450
6211335007	0.1233	0.1811
6211335010	0.3083	0.4529
6211335015	0.3083	0.4529
6211335017	0.3083	0.4529
6211335025	0.37	0.5436
6211335030	0.37	0.5436
6211335035	0.37	0.5436
6211335040	0.37	0.5436
6211335054	0.37	0.5436
6211335058	0.37	0.5436
6211335061	0.37	0.5436
6211339003	0.0987	0.1450
6211339007	0.1233	0.1811
6211339010	0.3083	0.4529
6211339015	0.3083	0.4529
6211339017	0.3083	0.4529
6211339025	0.37	0.5436
6211339030	0.37	0.5436
6211339035	0.37	0.5436
6211339040	0.37	0.5436
6211339054	0.37	0.5436
6211339058	0.37	0.5436
6211339061	0.37	0.5436
6211390310	0.1233	0.1811
6211390320	0.1233	0.1811
6211390330	0.1233	0.1811
6211390340	0.1233	0.1811
6211390345	0.1233	0.1811
6211390351	0.1233	0.1811
6211391510	0.2466	0.3623
6211391520	0.2466	0.3623
6211391530	0.2466	0.3623
6211391540	0.2466	0.3623
6211391550	0.2466	0.3623
6211391560	0.2466	0.3623
6211391570	0.2466	0.3623
6211391590	0.2466	0.3623
6211393010	0.1233	0.1811
6211393020	0.1233	0.1811
6211393030	0.1233	0.1811
6211393040	0.1233	0.1811
6211393045	0.1233	0.1811
6211393051	0.1233	0.1811
6211398010	0.2466	0.3623
6211398020	0.2466	0.3623
6211398030	0.2466	0.3623
6211398040	0.2466	0.3623
6211398050	0.2466	0.3623
6211398060	0.2466	0.3623
6211398070	0.2466	0.3623
6211398090	0.2466	0.3623
6211420503	0.6412	0.9420

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211420507	0.8016	1.1776
6211420510	0.9865	1.4493
6211420520	0.9865	1.4493
6211420525	1.1099	1.6306
6211420530	0.8632	1.2681
6211420540	0.9865	1.4493
6211420554	1.1099	1.6306
6211420556	1.1099	1.6306
6211420560	0.9865	1.4493
6211420570	1.1099	1.6306
6211420575	1.1099	1.6306
6211420581	1.1099	1.6306
6211421003	0.6412	0.9420
6211421007	0.8016	1.1776
6211421010	0.9865	1.4493
6211421020	0.9865	1.4493
6211421025	1.1099	1.6306
6211421030	0.8632	1.2681
6211421040	0.9865	1.4493
6211421054	1.1099	1.6306
6211421056	1.1099	1.6306
6211421060	0.9865	1.4493
6211421070	1.1099	1.6306
6211421075	1.1099	1.6306
6211421081	1.1099	1.6306
6211430503	0.0987	0.1450
6211430507	0.1233	0.1811
6211430510	0.2466	0.3623
6211430520	0.2466	0.3623
6211430530	0.2466	0.3623
6211430540	0.2466	0.3623
6211430550	0.2466	0.3623
6211430560	0.2466	0.3623
6211430564	0.3083	0.4529
6211430566	0.2466	0.3623
6211430574	0.3083	0.4529
6211430576	0.37	0.5436
6211430578	0.37	0.5436
6211430591	0.2466	0.3623
6211431003	0.0987	0.1450
6211431007	0.1233	0.1811
6211431010	0.2466	0.3623
6211431020	0.2466	0.3623
6211431030	0.2466	0.3623
6211431040	0.2466	0.3623
6211431050	0.2466	0.3623
6211431060	0.2466	0.3623
6211431064	0.3083	0.4529
6211431066	0.2466	0.3623
6211431074	0.3083	0.4529
6211431076	0.37	0.5436
6211431078	0.37	0.5436
6211431091	0.2466	0.3623
6211492510	0.2466	0.3623
6211492520	0.2466	0.3623
6211492530	0.2466	0.3623
6211492540	0.2466	0.3623
6211492550	0.2466	0.3623
6211492560	0.2466	0.3623
6211492570	0.2466	0.3623
6211492580	0.2466	0.3623
6211492590	0.2466	0.3623
6211498010	0.2466	0.3623
6211498020	0.2466	0.3623
6211498030	0.2466	0.3623
6211498040	0.2466	0.3623
6211498050	0.2466	0.3623
6211498060	0.2466	0.3623
6211498070	0.2466	0.3623
6211498080	0.2466	0.3623

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211498090	0.2466	0.3623
6212105010	0.9138	1.3425
6212105020	0.2285	0.3357
6212105030	0.2285	0.3357
6212109010	0.9138	1.3425
6212109020	0.2285	0.3357
6212109040	0.2285	0.3357
6212200010	0.6854	1.0069
6212200020	0.2856	0.4196
6212200030	0.1142	0.1678
6212300010	0.6854	1.0069
6212300020	0.2856	0.4196
6212300030	0.1142	0.1678
6212900010	0.1828	0.2686
6212900020	0.1828	0.2686
6212900030	0.1828	0.2686
6212900050	0.0914	0.1343
6212900090	0.4112	0.6041
6213201000	1.1187	1.6435
6213202000	1.0069	1.4792
6213900700	0.4475	0.6574
6213901000	0.4475	0.6574
6213902000	0.3356	0.4930
6214300000	0.1142	0.1678
6214400000	0.1142	0.1678
6214900010	0.8567	1.2586
6214900090	0.2285	0.3357
6215100025	0.1142	0.1678
6215200000	0.1142	0.1678
6215900015	1.0281	1.5104
6216000800	0.0685	0.1006
6216001300	0.3427	0.5035
6216001720	0.6397	0.9398
6216001730	0.1599	0.2349
6216001900	0.3427	0.5035
6216002110	0.578	0.8491
6216002120	0.2477	0.3639
6216002410	0.6605	0.9703
6216002425	0.1651	0.2425
6216002600	0.1651	0.2425
6216002910	0.6605	0.9703
6216002925	0.1651	0.2425
6216003100	0.1651	0.2425
6216003300	0.5898	0.8665
6216003500	0.5898	0.8665
6216003800	1.1796	1.7330
6216004100	1.1796	1.7330
6217109510	0.9646	1.4171
6217109520	0.1809	0.2658
6217109530	0.2412	0.3543
6217909003	0.9646	1.4171
6217909005	0.1809	0.2658
6217909010	0.2412	0.3543
6217909025	0.9646	1.4171
6217909030	0.1809	0.2658
6217909035	0.2412	0.3543
6217909050	0.9646	1.4171
6217909055	0.1809	0.2658
6217909060	0.2412	0.3543
6217909075	0.9646	1.4171
6217909080	0.1809	0.2658
6217909085	0.2412	0.3543
6301300010	0.8305	1.2201
6301300020	0.8305	1.2201
6301900030	0.2215	0.3254
6302100005	1.1073	1.6267
6302100008	1.1073	1.6267
6302100015	1.1073	1.6267
6302213010	1.1073	1.6267
6302213020	1.1073	1.6267

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302213030	1.1073	1.6267
6302213040	1.1073	1.6267
6302213050	1.1073	1.6267
6302215010	0.7751	1.1387
6302215020	0.7751	1.1387
6302215030	0.7751	1.1387
6302215040	0.7751	1.1387
6302215050	0.7751	1.1387
6302217010	1.1073	1.6267
6302217020	1.1073	1.6267
6302217030	1.1073	1.6267
6302217040	1.1073	1.6267
6302217050	1.1073	1.6267
6302219010	0.7751	1.1387
6302219020	0.7751	1.1387
6302219030	0.7751	1.1387
6302219040	0.7751	1.1387
6302219050	0.7751	1.1387
6302221010	0.5537	0.8134
6302221020	0.3876	0.5694
6302221030	0.5537	0.8134
6302221040	0.3876	0.5694
6302221050	0.3876	0.5694
6302221060	0.3876	0.5694
6302222010	0.3876	0.5694
6302222020	0.3876	0.5694
6302222030	0.3876	0.5694
6302290020	0.2215	0.3254
6302313010	1.1073	1.6267
6302313020	1.1073	1.6267
6302313030	1.1073	1.6267
6302313040	1.1073	1.6267
6302313050	1.1073	1.6267
6302315010	0.7751	1.1387
6302315020	0.7751	1.1387
6302315030	0.7751	1.1387
6302315040	0.7751	1.1387
6302315050	0.7751	1.1387
6302317010	1.1073	1.6267
6302317020	1.1073	1.6267
6302317030	1.1073	1.6267
6302317040	1.1073	1.6267
6302317050	1.1073	1.6267
6302319010	0.7751	1.1387
6302319020	0.7751	1.1387
6302319030	0.7751	1.1387
6302319040	0.7751	1.1387
6302319050	0.7751	1.1387
6302321010	0.5537	0.8134
6302321020	0.3876	0.5694
6302321030	0.5537	0.8134
6302321040	0.3876	0.5694
6302321050	0.3876	0.5694
6302321060	0.3876	0.5694
6302322010	0.5537	0.8134
6302322020	0.3876	0.5694
6302322030	0.5537	0.8134
6302322040	0.3876	0.5694
6302322050	0.3876	0.5694
6302322060	0.3876	0.5694
6302390030	0.2215	0.3254
6302402010	0.9412	1.3827
6302511000	0.5537	0.8134
6302512000	0.8305	1.2201
6302513000	0.5537	0.8134
6302514000	0.7751	1.1387
6302593020	0.5537	0.8134
6302600010	1.1073	1.6267
6302600020	0.9966	1.4641
6302600030	0.9966	1.4641

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302910005	0.9966	1.4641
6302910015	1.1073	1.6267
6302910025	0.9966	1.4641
6302910035	0.9966	1.4641
6302910045	0.9966	1.4641
6302910050	0.9966	1.4641
6302910060	0.9966	1.4641
6302931000	0.4429	0.6507
6302932000	0.4429	0.6507
6302992000	0.2215	0.3254
6303191100	0.8859	1.3015
6303910010	0.609	0.8947
6303910020	0.609	0.8947
6303921000	0.2768	0.4066
6303922010	0.2768	0.4066
6303922030	0.2768	0.4066
6303922050	0.2768	0.4066
6303990010	0.2768	0.4066
6304111000	0.9966	1.4641
6304113000	0.1107	0.1626
6304190500	0.9966	1.4641
6304191000	1.1073	1.6267
6304191500	0.3876	0.5694
6304192000	0.3876	0.5694
6304193060	0.2215	0.3254
6304200020	0.8859	1.3015
6304200070	0.2215	0.3254
6304910120	0.8859	1.3015
6304910170	0.2215	0.3254
6304920000	0.8859	1.3015
6304996040	0.2215	0.3254
6505001515	1.1189	1.6438
6505001525	0.5594	0.8218
6505001540	1.1189	1.6438
6505002030	0.9412	1.3827
6505002060	0.9412	1.3827
6505002545	0.5537	0.8134
6507000000	0.3986	0.5856
9404401000	0.9966	1.4641
9404409005	0.6644	0.9761
9404409036	0.0997	0.1465
9404901030	0.2104	0.3091
9404901060	0.2104	0.3091
9404901090	0.2104	0.3091
9404908100	0.9966	1.4641
9404909605	0.6644	0.9761
9404909636	0.0997	0.1465
9619002100	0.8681	1.2753
9619002500	0.1085	0.1594
9619003100	0.9535	1.4008
9619003300	1.1545	1.6961
9619004100	0.2384	0.3502
9619004300	0.2384	0.3502
9619006100	0.8528	1.2528
9619006400	0.2437	0.3580
9619006800	0.3655	0.5370
9619007100	1.1099	1.6306
9619007400	0.2466	0.3623
9619007800	0.2466	0.3623
9619007900	0.2466	0.3623

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

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

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

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

(ii) The request for exemption should include:

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

(B) the HTS classification of the imported product;

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

(D) estimated date of entry;

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

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

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

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

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

[57 FR 29432, July 2, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1205.510, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 1205.511 Payment and collection.

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

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

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

(b) The supplemental assessment shall be paid by:

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

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

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

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

[57 FR 29190, July 1, 1992]

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

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

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

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

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

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

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

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

than one producer, the handler shall collect each producer's proportionate share of the assessment and shall give each producer a receipt indicating the producer's proportionate share of the assessment payment.

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

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

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

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

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

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

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

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

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

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

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

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

the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

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

(e) Any person who (1) purchases a producer's equity in cotton tendered to CCC for Form A loan or (2) purchases cotton that a producer has redeemed from the Form A loan, shall be the collecting handler for the portion of the total supplemental assessment not collected under paragraph (c) of this section. The handler shall give the producer a receipt indicating payment of that portion of the supplemental assessment.

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

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

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

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

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

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

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

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

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

(a) The Customs Service will collect the assessment from the importer or from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported

into the United States. The Customs Service will collect the assessment on cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in §1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

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

[57 FR 29191, July 1, 1992]

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

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

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

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

[57 FR 29191, July 1, 1992]

§ 1205.516 Reports and remittance to the Cotton Board.

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

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

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

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

(A) Date of report;

(B) Reporting period covered by report;

(C) Gin code number;

(D) Name and address of handler;

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

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

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

(3) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (a)(2) of this section. All remittances sent to the Cotton Board

by collecting handlers shall be made by check, draft, or money order payable to the order of the ''Cotton Board''. All remittances shall be received subject to collection and payment at par.

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

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

(iii) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

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

(1) The importer's name and address;

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

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

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

[57 FR 29190, July 1, 1992]

§ 1205.517 Failure to report and remit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[57 FR 29191, July 1, 1992]

§ 1205.518 Receipts for payment of assessments.

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

(a) Name and address of collecting handler.

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

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

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

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

(f) Total assessments paid by the producer.

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

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

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

§ 1205.519 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the crop year, as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces and/or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for

disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cotton and cotton products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cotton and cotton products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) An importer who is exempt from payment of assessments under paragraph (f) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' cotton and cotton products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

[70 FR 2754, Jan. 14, 2005, as amended at 80 FR 82023, Dec. 31, 2015]

REIMBURSEMENTS

§ 1205.520 Procedure for obtaining reimbursement.

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

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

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

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

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

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

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

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

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

(c) Where more than one importer shared in the assessment payment on cotton, joint or separate reimbursement application forms may be filed.

In any such case, the reimbursement application shall show the names, addresses and proportionate shares of assessments paid by all importers. The reimbursement application shall bear the signature of each importer seeking reimbursement.

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

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

WAREHOUSE RECEIPTS

§ 1205.525 Entry of gin code number.

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

[57 FR 29192, July 1, 1992]

REPORTS AND RECORDS

§ 1205.530 Gin reports and reporting schedule.

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

(1) *End-of-season report.* Except as provided in paragraph (a)(2) of this section, each gin shall report to the Cotton Board an alphabetical listing of producer names, their addresses, and the number of bales ginned for each such producer during its ginning season.

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

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

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

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

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

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

§ 1205.531 Records.

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

[57 FR 29192, July 1, 1992]

§ 1205.532 Retention period for reports and records.

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

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

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

[57 FR 29192, July 1, 1992]

§ 1205.533 Availability of reports and records.

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

[57 FR 29192, July 1, 1992]

CONFIDENTIAL INFORMATION

§ 1205.540 Confidential books, records, and reports.

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

[57 FR 29192, July 1, 1992]

§ 1205.541 OMB control numbers.

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

[57 FR 29192, July 1, 1992]

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PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 68 FR 58554, Oct. 9, 2003, unless otherwise noted.

Subpart A—Mango Promotion, Research, and Information Order Definitions

SOURCE: 69 FR 59122, Oct. 4, 2004, unless otherwise noted.

§ 1206.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1206.2 Board.

Board or National Mango Board means the administrative body established pursuant to §1206.30, or such other name as recommended by the Board and approved by the Department.

[84 FR 5344, Feb. 21, 2019]

§ 1206.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1206.4 Customs.

Customs means the Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1206.5 Department.

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

§ 1206.6 First handler.

First handler means any person (excluding a common or contract carrier) receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

[86 FR 11096, Feb. 24, 2021]

§ 1206.7 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

§ 1206.8 Foreign producer.

Foreign producer means any person:

(a) Who is engaged in the production and sales of mangos outside of the United States who owns, or shares the ownership and risk of loss of the crop for sale in the U.S. market; or

(b) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

[86 FR 11096, Feb. 24, 2021]

§ 1206.9 Importer.

Importer means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

[86 FR 11096, Feb. 24, 2021]

§ 1206.10 Information.

Information means information and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae*.

[86 FR 11096, Feb. 24, 2021]

§ 1206.12 Market or marketing.

Marketing means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in interstate or intrastate channels of commerce.

§ 1206.13 Order.

Order means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1206.14 Part.

Part means part 1206 which includes the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order.

§ 1206.15 Person.

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

§ 1206.16 Producer.

Producer means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.17 Promotion.

Promotion means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

§ 1206.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

§ 1206.19 [Reserved]

§ 1206.20 Secretary.

Secretary means the Secretary of Agriculture of the United States.

§ 1206.21 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1206.22 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1206.23 United States.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.24 [Reserved]

NATIONAL MANGO BOARD

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Board.* There is hereby established a National Mango Board composed of eight importers; one first handler; two domestic producers; and seven foreign producers. First handler Board members must receive 500,000 pounds or more mangos annually from producers, and importer Board members must import 500,000 pounds or more mangos annually. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* Board seats for importers of mangos shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. Two seats shall be allocated for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) *Adjustment of membership.* At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

[69 FR 59122, Oct. 4, 2004, as amended at 76 FR 36283, June 22, 2011; 84 FR 5345, Feb. 21, 2019; 86 FR 11096, Feb. 24, 2021]

§ 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the mango importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to mango importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of

votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango producers. Organizations of foreign mango producers shall submit two nominees for each position, and foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States.

(h) From the nominations, the Secretary shall select the members of the Board.

[69 FR 59122, Oct. 4, 2004, as amended at 76 FR 36283, June 22, 2011; 78 FR 39566, July 2, 2013; 84 FR 5345, Feb. 21, 2019; 86 FR 11097, Feb. 24, 2021]

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, and foreign producer members of the Board will be three years. Members may serve a maximum of two consecutive three-year terms. Each term of office will end on December 31, with new terms of office beginning on January 1

[86 FR 11097, Feb. 24, 2021]

§ 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a Board member, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least one more than half of the voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance

with its bylaws, which shall be established by the Board and approved by the Department.

[68 FR 58554, Oct. 9, 2003, as amended at 84 FR 5345, Feb. 21, 2019; 86 FR 11097, Feb. 24, 2021; 86 FR 33494, June 25, 2021]

§ 1206.35 Compensation and reimbursement.

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

§ 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Department for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Department or the Board may require;

(3) The Department may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Department calendar year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each calendar year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

§ 1206.37 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Department amendments to the Order.

EXPENSES AND ASSESSMENTS

§ 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each calendar year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the calendar year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

§ 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) *Assessment rate.* The assessment rate on mangos shall be three quarters of a cent ($0.0075) per pound (or $0.0165 per kg). The assessment rates will be reviewed periodically and may be modified by the Board with the approval of the Department.

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers in the 0804.50.4045, 0804.50.4055, 0804.50.6045, and 0804.50.6055 Harmonized Tariff Schedule (HTS) of the United States and shall be the same or equivalent to the rate of mangos produced in the United States.

(2) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of mangos, assessments will continue to be collected based on the new numbers.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

[68 FR 58554, Oct. 9, 2003, as amended at 77 FR 21846, Apr. 12, 2012; 84 FR 5345, Feb. 21, 2019; 86 FR 11097, Feb. 24, 2021]

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos per

calendar year may claim an exemption from the assessments required under §1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under §1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler must certify that it will receive less than 500,000 pounds of domestic mangos during the fiscal period for which the exemption is claimed. An importer must certify that it will import less than 500,000 pounds of mangos for the fiscal period for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

[68 FR 58554, Oct. 9, 2003, as amended at 84 FR 5345, Feb. 21, 2019; 86 FR 11097, Feb. 24, 2021; 86 FR 33494, June 25, 2021]

PROMOTION, RESEARCH, AND INFORMATION

§1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

§1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of

the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department Upon termination of this subpart, §1206.73 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

§ 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, any regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1206.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify

the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

MISCELLANEOUS

§ 1206.70 Right of the Secretary.

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

§ 1206.71 Referenda.

(a) *Initial Referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

§ 1206.72 Suspension and termination.

(a) The Department shall suspend or terminate this part or subpart or a provision thereof if the Department finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Department determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(c) If, as a result of a referendum the Department determines that this subpart is not approved, the Department shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1206.73 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

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

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested

in the Board or the trustees pursuant to the Order.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

§ 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

§ 1206.75 Personal liability.

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

§ 1206.76 Separability.

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

§ 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 and OMB control number 0581–0093.

[84 FR 5346, Feb. 21, 2019]

Subpart B—Referendum Procedures

§ 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1206.101 Definitions.

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

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

(c) *Eligible first handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4045, 0804.50.4055, 0804.50.6045, and 0804.50.6055 during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the U.S. Customs and Border Protection and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the U.S. Customs and Border Protection, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the U.S. Customs and Border Protection when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae*.

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

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

(i) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

[68 FR 58554, Oct. 9, 2003, as amended at 84 FR 5436, Feb. 21, 2019; 86 FR 11097, Feb. 24, 2021]

§ 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1206.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1206.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1206.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1206.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1206.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093.

[86 FR 11098, Feb. 24, 2021

Subpart C—Administrative Requirements

SOURCE: 70 FR 2754, Jan. 14, 2005, unless otherwise noted.

§ 1206.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Mango Promotion, Research, and Information Order.

§ 1206.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1206.202 Exemption for organic mangos.

(a) A first handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products handled by the first handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible first handler shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the first handler continues to be eligible for the exemption.

(c) A first handler request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a first handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the first handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' mangos on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for exemption. This documentation shall include the same information required of first handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(f) The exemption will apply immediately following the issuance of the certificate of exemption.

(g) An importer who is exempt from payment of assessments under paragraph (e) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified ''organic'' or ''100 percent organic'' mangos and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

[69 FR 59122, Oct. 4, 2004, as amended at 80 FR 82023, Dec. 31, 2015]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Potato Research and Promotion Plan

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AUTHORITY: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

Subpart—Potato Research and Promotion Plan

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

DEFINITIONS

§ 1207.301 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may

hereafter be delegated, to act in his stead.

§ 1207.302 Act.

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

[56 FR 40229, Aug. 14, 1991]

§ 1207.303 Plan.

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

§ 1207.304 Person.

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

§ 1207.305 Producer.

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

§ 1207.306 Potatoes.

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

[56 FR 40229, Aug. 14, 1991]

§ 1207.307 Handle.

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

§ 1207.308 Handler.

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

§ 1207.309 Board.

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

§ 1207.310 Fiscal period and marketing year.

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

§ 1207.311 Programs and projects.

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

§ 1207.312 Importer.

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

[56 FR 40229, Aug. 14, 1991]

§ 1207.313 Customs Service.

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

[56 FR 40229, Aug. 14, 1991]

NATIONAL POTATO PROMOTION BOARD

§ 1207.320 Establishment and membership.

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

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is

not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

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

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

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

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

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 49 FR 31390, Aug. 7, 1984; 56 FR 40229, Aug. 14, 1991; 87 FR 22435, Apr. 15, 2022]

§1207.321 Term of office.

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

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

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

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

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

§1207.322 Nominations and appointment.

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

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

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

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

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

(1) How many importers belong to the association;

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

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

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

(5) Other relevant information as may be warranted.

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

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

§ 1207.323 Acceptance.

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

§ 1207.324 Vacancies.

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

§ 1207.325 Procedure.

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

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

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

telephone. Any vote cast by telephone shall be confirmed promptly in writing.

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

§ 1207.326 Compensation and reimbursement.

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

§ 1207.327 Powers.

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

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

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

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

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

§ 1207.328 Duties.

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

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

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

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

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

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

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

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

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

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

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

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

RESEARCH AND PROMOTION

§ 1207.335 Research and promotion.

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

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

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

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

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

EXPENSES AND ASSESSMENTS

§ 1207.341 Budget and expenses.

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

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

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

§ 1207.342 Assessments.

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

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

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

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

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

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

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

§ 1207.343 [Reserved]

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately two fiscal

periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1207.350 Reports.

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

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

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

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

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

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

§ 1207.351 Books and records.

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

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

§ 1207.352 Confidential treatment.

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

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

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

[56 FR 40230, Aug. 14, 1991]

MISCELLANEOUS

§ 1207.360 Influencing governmental action.

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

§ 1207.361 Right of the Secretary.

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

§ 1207.362 Suspension or termination.

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

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

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

§ 1207.363 Proceedings after termination.

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

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

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

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

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

§ 1207.364 Effect of termination or amendment.

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

§ 1207.365 Personal liability.

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

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability

thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

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

DEFINITIONS

§ 1207.500 Definitions.

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

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

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

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

GENERAL

§ 1207.501 [Reserved]

§ 1207.502 Determination of membership.

(a) Pursuant to §1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States.

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

[56 FR 40231, Aug. 14, 1991, as amended at 87 FR 22435, Apr. 15, 2022]

§ 1207.503 Nominations.

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

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

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

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

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

§ 1207.504 Term of office.

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

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

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

§ 1207.505 Procedure.

(a) The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the

Board on June 7, 1972, and approved by the Secretary and any subsequent amendments adopted by the Board and approved by the Secretary.

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

[62 FR 46179, Sept. 2, 1997]

§ 1207.506 Policy.

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

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

§ 1207.507 Administrative Committee.

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

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

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

(2) [Reserved]

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

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985; 56 FR 40231, Aug. 14, 1991; 59 FR 44036, Aug. 26, 1994; 71 FR 76901, Dec. 22, 2006; 78 FR 52082, Aug. 22, 2013]

§ 1207.508 USDA costs.

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

[49 FR 26202, June 27, 1984]

ASSESSMENTS

§ 1207.510 Levy of assessments.

(a) *Domestic assessments.* (1) An assessment rate of 3 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States.

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

(b) *Assessments on imports.* (1) An Assessment rate of 3 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 3 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed

potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the Board through the U.S. Customs and Border Protection at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

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

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

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are listed in the following table. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the potatoes, assessments will continue to be collected based on the new numbers.

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5015	3.0	0.066
0701.90.5025	3.0	0.066
0701.90.5035	3.0	0.066
0701.90.5045	3.0	0.066
0701.90.5055	3.0	0.066
0701.90.5065	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

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

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

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

[57 FR 40083, Sept. 2, 1992, as amended at 58 FR 3359, Jan. 8, 1993; 59 FR 44036, Aug. 26, 1994; 71 FR 11296, Mar. 7, 2006; 71 FR 50330, Aug. 25, 2006; 74 FR 63543, Dec. 4, 2009; 75 FR 14491, Mar. 26, 2010; 87 FR 22436, Apr. 15, 2022]

§1207.511 Determination of assessable quantity.

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

§1207.512 Designated handler.

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

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

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

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

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

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

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

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

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

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

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

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

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

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

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes

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

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

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment directly to the Board of any assessment due but not collected by the Customs Service at the time of entry, or withdrawal, for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check or electronic payment. Checks are to be made payable to the National Potato Promotion Board or the Board's official doing business as name. Payment is due not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

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

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

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

(iii) The period potatoes were handled;

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

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

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

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

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

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

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

(d) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in

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

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

(2) [Reserved]

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997; 87 FR 22436, Apr. 15, 2022]

§1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) The producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer

sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' potatoes, potato products, and seed potatoes on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

[70 FR 2755, Jan. 14, 2005, as amended at 80 FR 82024, Dec. 31, 2015]

§ 1207.515 Safeguards.

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

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

RECORDS

§ 1207.532 Retention period for records.

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

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

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

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

§ 1207.533 Availability of records.

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

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

[56 FR 40232, Aug. 14, 1991]

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

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

assigned OMB Control number 0581–0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

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

[56 FR 40232, Aug. 14, 1991]

§ 1207.545 Right of the Secretary.

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

§ 1207.546 Personal liability.

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

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

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AUTHORITY: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

SOURCE: 57 FR 31951, July 20, 1992, unless otherwise noted.

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

SOURCE: 58 FR 3449, Jan. 8, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under §1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such

manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 On average.

On average means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary.

§ 1209.13 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.14 Person.

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

§ 1209.15 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.16 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.17 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.18 Region.

Region means one of the described geographic subdivisions of the production areas described in §1209.30 (b) or as later realigned or reapportioned pursuant thereto, or the import region described in §1209.30(c).

§ 1209.19 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.20 Secretary.

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

§ 1209.21 State and United States.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

MUSHROOM COUNCIL

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under §1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under §1209.33 once imports, on average, reach at least 50,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into three geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1:* All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—2 Members.

(2) *Region 2:* The State of Pennsylvania—4 Members.

(3) *Region 3:* The State of California—2 Members.

(c) Importers shall be represented by a single, separate region, referred to as Region 4, consisting of the United States when imports, on average, equal or exceed 50,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e), of this section or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 50,000,000 pounds of mushrooms annually.

(3) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(4) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(5) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(6) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e)(1), (2), (3), (4) and (5) of this section that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§ 1209.8 and 1209.15; and

(2) Use the information received by the Council under § 1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

[58 FR 3449, Jan. 8, 1993, as amended at 74 FR 50919, Oct. 2, 2009]

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall

include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of on-average production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or importers voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both the highest number of votes cast and the highest volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both the highest number of votes cast and the highest volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their on-average production

or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the Council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: One producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or such other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

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

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph, or any other means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws,which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

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

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

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

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt

such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees for the members of such committees;

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

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under §1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in §1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) To develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.

(m) Such other powers as may be approved by the Secretary; and

(n) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and grade standards would benefit the promotion of mushrooms.

[58 FR 3449, Jan. 8, 1993, as amended at 74 FR 50920, Oct. 2, 2009]

§1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in §2109.50.

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

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

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each programs, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may

be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

Each budget shall include a rate of assessment for such fiscal year calculated, subject to §1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f). The Council may change such rate at any time, as provided in §1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii), any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall be one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b)(1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the numbers, 0709.51.01 and 0709.59 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessments due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed in or imported into the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

[58 FR 3449, Jan. 8, 1993, as amended at 72 FR 41427, July 30, 2007]

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually shall be exempt from assessments under this part.

(2) [Reserved]

(b) To claim such exemption, such persons shall apply to the Council, in the form and manner prescribed in the rules and regulations.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Domestic and imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

[58 FR 3449, Jan. 8, 1993, as amended at 70 FR 2756, Jan. 14, 2005; 80 FR 82025, Dec. 31, 2015]

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

REPORTS, BOOKS AND RECORDS

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under §1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under §1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of mushrooms determined under paragraph (a)(4) multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words *final report* shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each persons who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1209.70 Right of the Secretary.

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

§ 1209.71 Suspension or termination.

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

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b) (1) or (2) who, during a representative period determined by the Secretary, have been engaged in producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart

in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1209.72 Proceedings after termination.

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

(b) The trustees shall:

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

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

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

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

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, §1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the

Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

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

Subpart B—Administrative Requirements

SOURCE: 58 FR 8197, Feb. 11, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Mushroom Promotion, Research, and Consumer Information Order of this part.

NOMINATION PROCEDURES

§ 1209.230 Reallocation of Council members.

Pursuant to §1209.30, the number of members on the Council shall be as follows:

(a) Region 1: All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—3 Members.

(b) Region 2: The State of Pennsylvania—4 Members.

(c) Region 3: The State of California—1 Member.

(d) Region 4: Importers—1 Member.

[84 FR 17062, Apr. 24, 2019]

§ 1209.231 Nominations.

Nominations shall be made at regional caucuses of producers or importers, or by mail ballot in accordance with the procedures prescribed in §1209.31 of this part. Proxy voting by producers and importers shall not be permitted at a regional caucus or in a mail ballot. Each regional caucus and mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by August 1, or such other date approved by the Secretary.

§ 1209.233 Regional caucus chairpersons.

(a) Regional caucus chairpersons shall be elected by a simple majority vote of eligible voters in attendance. Such elections shall be coordinated by the Council, except for the initial elections, which shall be coordinated by a representative of the Secretary.

(b) Regional caucus chairpersons will coordinate the entire nomination process. In conducting the nominations process, each regional caucus chairperson shall ensure that:

(1) Voting for producer nominees is limited to producers, and voting for importer nominees is limited to importers; and

(2) Producer candidates for nomination are producers, and importer candidates for nomination are importers.

(c) Within 14 days after completion of each regional caucus, each chairperson shall provide the Secretary with the following information:

(1) The identification of that region's two nominees for each open position on the Council; and

(2) A typed copy of the regional caucus's minutes.

(d) The chairperson of each regional caucus shall provide nominees with qualification statements and other specified information. Each nominee will be contacted by the chairperson and asked to forward such completed documentation to the Council within 14 days after completion of the regional caucus, except for the initial nominees, which shall be asked to forward such completed documentation to the Secretary.

(e) The tenure of the chairperson shall only be for the duration of the regional caucus and the preparation of required documentation.

§ 1209.235 Mail balloting.

(a) After the initial regional caucuses, the Council may conduct nominations of individuals as candidates for

appointment to the Council by mail ballot in lieu of a regional caucus.

(b)(1) In the event of a mail ballot, all qualified individuals in a region interested in serving as a member on the Council or persons who are interested in nominating an individual to serve on the Council shall submit to the Council in writing such information as name, mailing address, number of pounds of mushrooms produced or imported, or such other information as may be required, in order to place such individual on the ballot.

(2) Notice of mail balloting to nominate candidates for a position on the Council shall be publicized by the Council to producers or importers in the region involved, and to the Secretary, at least 120 days before the region's nominee ballot is issued.

(3) In proposing nominees for inclusion on a mail ballot, proposed nominations must be received by the Council at least 30 days before the region's nominee ballot is issued.

(c) Once proposed nominations have been submitted from the applicable region, the Council shall cause each proposed nomination, if the individual qualifies, to be placed on the region's nominee ballot. The Council then shall mail a ballot to each known producer or importer within the region.

(d) Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Council through newspapers and other publications having general circulation among producers in the mushroom producing areas involved or among mushroom importers.

(e) Each producer or importer shall cast a ballot for each open position on the Council assigned to the region in accordance with the procedures prescribed in §1209.31 of this part. The completed ballot must be returned to the Council or its designee within 30 days after the ballot is issued.

(f) Within 45 days after a mail ballot is issued, the Council shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the region's two nominees for each open position on the Council.

(g) The Council shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Council and asked to forward such completed documentation to the Council within 14 days of such notification.

§ 1209.237 Appointment.

If an employee, partner, officer, or shareholder of a producer or importer is a current member of the Council, no nominee who is also an employee, partner, officer, or shareholder of such producer or importer shall be appointed to the Council. A Council member shall be disqualified from serving on the Council if such individual ceases to be affiliated with a producer or importer within the region the Council member represents.

GENERAL

§ 1209.239 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

ASSESSMENTS

§ 1209.251 Payment of assessments.

(a) Each first handler responsible for collecting assessments on domestic mushrooms shall collect the amounts assessed and remit such amounts to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed to or through the first handler.

(b) Each producer responsible for paying any assessment amount on the producer's own mushrooms shall remit

such amount to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed by the producer.

(c) Each importer shall be responsible for remittance to the Council of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Council on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports mushrooms, as principal or as an agent, broker, or consignee for any person who produces mushrooms outside the United States for marketing in the United States shall be considered an importer.

(d) Remittance shall be by check, draft, or money order payable to the Mushroom Council, and shall be accompanied by a report, on a form provided by the Council.

(e) A late payment charge shall be imposed on any first handler or importer who fails to make timely remittance to the Council of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the mushrooms involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of §1209.260 of this subpart and §1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mushrooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fifteenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemptions and exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the person's production or importation in the preceding fiscal year.

(2) In addition to the exemption provided for in §1209.52, a producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(3) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the producer continues to be eligible for the exemption.

(ii) A producer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Council, with the approval of the Secretary.

(iii) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible mushroom importer shall submit a request for exemption from assessment on imported certified ''organic'' or ''100 percent organic'' mushrooms, or mushrooms certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (a)(4)(ii) of this section. If

the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(d) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt mushrooms.

[58 FR 3449, Jan. 8, 1993, as amended at 70 FR 2756, Jan. 14, 2005; 80 FR 82026, Dec. 31, 2015]

REPORTS

§ 1209.260 Reports.

Each first handler shall be required to report monthly to the Council such information as may be required under § 1209.60(a) of this part. In addition, each first handler shall be required to provide the tax identification number or social security number of each producer the first handler has dealt with during the time period covered by the report.

[58 FR 8197, Feb. 11, 1993, as amended at 60 FR 13614, Mar. 14, 1995]

MISCELLANEOUS

§ 1209.280 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. is OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001.

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

SOURCE: 62 FR 66975, Dec. 23, 1997, unless otherwise noted.

§ 1209.300 General.

A referendum to determine whether eligible producers and importers favor the amendment, continuation, suspension, or termination of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

[74 FR 18464, Apr. 23, 2009]

§ 1209.301 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

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

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order.

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

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures'', wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of fresh mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produces, on average, over 500,000 pounds annually of fresh mushrooms during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imports, on average, over 500,000 pounds annually of fresh mushrooms during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

§ 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of

such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Ballots are to be cast by mail or fax.

§ 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of mushrooms produced by the voting producer during the representative period; and

(3) The total volume of mushrooms imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) Collect and safeguard ballots received by fax.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results.

(g) Prepare a report on the referendum.

(h) Prepare an announcement of the results for the public.

§ 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1209.307 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Subpart A—Watermelon Research and Promotion Plan

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AUTHORITY: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

SOURCE: 53 FR 51091, Dec. 20, 1988, unless otherwise noted.

Subpart A—Watermelon Research and Promotion Plan

SOURCE: 54 FR 24545, June 8, 1989, unless otherwise noted.

DEFINITIONS

§ 1210.301 Secretary.

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

§ 1210.302 Act.

Act means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622), as amended.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.303 Plan.

Plan means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

Board means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

Watermelon means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.306 Producer.

Producer means any person engaged in the growing of 10 acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term ''handler'' means the ''first'' person who performs the handling functions.

§ 1210.309 Person.

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

§ 1210.310 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

Promotion means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

§ 1210.314 Importer.

Importer means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.315 United States.

United States means each of the several States and the District of Columbia.

[60 FR 10797, Feb. 28, 1995]

NATIONAL WATERMELON PROMOTION BOARD

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the ''Board.'' The Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to §1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in §1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

(c) Nominations for producer and handler positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(d) Nominations for importer positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process. A person who both imports and handles watermelons may participate in the nomination process and serve on the Board as either an importer or handler, but not both.

(e) All producers and handlers within the district may participate in the convention: *Provided,* That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further,* That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in a multi-State district shall have more than three producer and handler representatives concurrently on the Board.

(2) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided,* That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980,

and 1981 will be controlling as to any additional production volume votes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995; 79 FR 17852, Mar. 31, 2014; 85 FR 56474, Sept. 14, 2020]

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

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

(d) No person shall serve more than two successive terms of office.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995; 60 FR 13515, Mar. 13, 1995]

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

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

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.326 Compensation and reimbursement.

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

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

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

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

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

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

§ 1210.328 Duties.

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

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

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds received pursuant to this Plan;

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

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

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

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers, handlers, and importers reports of its activities carried out.

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

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

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers, handlers, and importers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers, importers, and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

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

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

EXPENSES AND ASSESSMENTS

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments received pursuant to § 1210.341.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for

domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(f) There shall be a late payment charge imposed on any handler or importer who fails to remit to the Board the total amount for which any such handler or importer is liable on or before the payment due date established by the Board under paragraph (e) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(g) There shall also be imposed on any handler or importer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler or importer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(h) The Board is hereby authorized to accept advance payment of assessments by handlers and importers that shall be credited toward any amount for which the handlers and importers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(i) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(j) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.342 Exemption from assessment.

(a) The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying

whether a person meets the definition of a producer under section 1210.306.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.343 [Reserved]

§ 1210.344 Operating reserve.

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

REPORTS, BOOKS, AND RECORDS

§ 1210.350 Reports.

(a) Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(1) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(2) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

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

(4) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) The total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) The total quantity of watermelons that are exempt from the Plan; and

(3) Such other information as may be prescribed by the Board.

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

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.351 Books and records.

Each handler and importer subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for 2 years beyond the fiscal period of their applicability.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

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

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

(b) Any disclosure of confidential information by any employee of the

Board, except as required by law, shall be considered willful misconduct.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.360 Right of the Secretary.

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

§ 1210.361 Personal liability.

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

§ 1210.362 Influencing government action.

No funds received by the Board under this Plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.363 Suspension or termination.

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

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. Any such referendum shall be conducted by mail ballot.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995; 79 FR 17852, Mar. 31, 2014]

§ 1210.364 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

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

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

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

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

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

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

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, §1210.364 shall apply to determine the disposition of all such property.

Subpart B—Nominating Procedures

SOURCE: 54 FR 38205, Sept. 15, 1989, unless otherwise noted.

PRODUCER AND HANDLER MEMBERS

§ 1210.400 Terms defined.

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

§ 1210.401 District conventions.

(a) Except for the initial district convention in each district, which will be called and opened by a representative of the Secretary, the Board shall call and open all district conventions.

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in §1210.501, is entitled to two producer and two handler members on the Board.

(c) There shall be two individuals nominated for each vacant position. In multi-State districts, no one State shall have nominees for more than three of the four district positions on the Board.

(d) All producers and handlers within each district may participate in that district's convention: *Provided,* That they meet the eligibility provisions set forth in §1210.402 of this subpart.

(e) The convention chairperson shall be elected as provided in §1210.403(b) of this subpart.

(f) The Board member nomination process shall be conducted by the chairperson in conformance with the provisions of §1210.321 of the Plan and §1210.403 of this subpart. At the conclusion of the district convention for the initial term of office, the chairperson will provide the Secretary with:

(1) The identification of that district's two nominees for each producer and handler position on the Board, and

(2) A typed copy of the district convention's minutes.

This information must be provided by the chairperson to the Board staff in a manner that will ensure receipt, at the address specified in the call for the district convention, within 14 calendar days of the district convention's completion, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward such information to the Secretary, in a manner that will ensure receipt, within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1. Further, the chairperson will immediately arrange for completion of qualification statements and other specified information by each nominee, and each nominee shall qualify by forwarding such information to the Board's office within 14 calendar days of completion of the district convention, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward the completed qualification statements and other specified information to the Secretary, in a manner that will ensure receipt within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993; 59 FR 18948, Apr. 21, 1994; 60 FR 10799, Feb. 28, 1995]

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

(b) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in § 1210.403 and § 1210.404 of this subpart.

(c) All producers and handlers attending their district conventions may be candidates for one or more of the positions of State spokesperson, district convention chairperson, and producer or handler nominee.

[54 FR 38205, Sept. 15, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.403 Voting procedures.

(a) Proxy voting by producers and handlers for producer and handler nominees shall be permitted at all district conventions: *Provided*, That producers may cast proxy votes for producers only, and handlers may cast proxy votes for handlers only. In non-multi-State districts, proxy voting shall be permitted for all producer and handler nominee balloting to determine the districts' nominees. In multi-State districts, proxy voting shall be permitted for all producers and handlers participating in a State's balloting to determine the State's nominees. No other proxy voting, such as for district convention chairperson, shall be allowed. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person

shall be demonstrated through documentation containing:

(1) The proxy voter's name, address, and telephone number;

(2) Signature and date signed;

(3) A certification identifying the proxy voter as a producer or a handler; and

(4) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

All proxy documentation must be received by the Board at its headquarters address at least two weeks before the district convention is scheduled to convene. For the purpose of the initial district convention, all proxy documentation must be forwarded to the Department representative identified in the call for the district convention in a manner that will ensure receipt, at the address specified in the call, at least 72 hours before the district convention is scheduled to convene. The Board, or in the case of the initial conventions the Department representative identified in the call or other representative of the Department, may challenge any proxy vote and disqualify any challenged vote for cause. In the case of duplicate proxy authorizations by any person, only the first authorization, determined by date will be allowed. In the case of duplicate dates, the proxy which is received first will be allowed.

(b) In non-multi-State districts, convention chairpersons shall be elected by a majority vote of the eligible voters in attendance. In multi-State districts, the election shall be by majority vote of all States present with each State's vote(s) determined by a majority vote of the eligible voters of that State in attendance. Each such State is entitled to one vote, plus one additional vote for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided,* That for the first two conventions, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

(c) In multi-State districts, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

(d) Convention chairpersons will coordinate the entire producer and handler nomination process. In conducting the nomination process, each convention chairperson will ensure that:

(1) Voting for producer nominees is limited to producers, and voting for handler nominees is limited to handlers; and

(2) Producer candidates for nomination are producers, and handler candidates for nomination are handlers.

(e) Voting, for producer and handler nominees, in non-multi-State districts shall be on the basis of one vote per person, except that persons authorized to cast proxy votes shall be allowed to cast all proxy votes not disallowed by the Board or the Department. Election of nominees shall be on the basis of a simple majority of all eligible votes cast.

(f) Voting for producer and handler nominees in multi-State districts shall be on a State by State basis. Producers and handlers from each State shall caucus separately, at the district convention, for the purpose of determining which nominees shall receive their State's vote(s) for membership on the Board. Each State's vote(s) shall be based on a simple majority of all votes (including proxy votes) cast by producers or handlers voting in their State's caucus. Each State represented at a multi-State district convention shall have one vote for each producer position and one vote for each handler position from the district on the Board. Each State shall further have an additional vote toward each position for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop

production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two calls for nominees, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes. Each State spokesperson will cast the State's vote(s) for each nominee position. Election of nominees shall be on the basis of a simple majority of all State votes cast.

(g) During the voting for convention chairperson, State spokesperson, and Board member nominee, should no candidate receive the required simple majority on the first ballot, the number of candidates may be reduced by dropping one or more of the lowest vote recipients from the list of candidates. The balloting will be repeated until the position is filled.

(h) Two nominees shall be elected for each of the producer and handler positions from each district on the Board. The two nominees for each position shall be elected simultaneously. The convention chairperson will open the floor to the nomination of candidates for possible election as a Board member nominee for each available position. Each position will be dealt with separately (*i.e.*, candidates for one position will be nominated and then elected before the convention moves on to the next available position). Each eligible voter may vote for two of the nominees on one ballot. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be elected as the district's Board member nominees for the position. No individual elected as a nominee for Board membership may be a candidate on subsequent Board member nominee ballots (*i.e.*, two different producer names and two different handler names must be submitted as nominees for each producer and handler position from each district to the Secretary of Agriculture). There shall be no designation of first and second choice nominees.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993; 85 FR 56474, Sept. 14, 2020]

IMPORTER MEMBERS

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) A person who both imports and handles watermelons may participate in the nomination process and serve on the Board as either an importer or handler, but not both.

[60 FR 10800, Feb. 28, 1995, as amended at 79 FR 17852, Mar. 31, 2014]

PUBLIC MEMBER

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

[55 FR 13256, Apr. 10, 1990. Redesignated and amended at 60 FR 10800, Feb. 28, 1995]

Subpart C—Rules and Regulations

SOURCE: 55 FR 13256, Apr. 10, 1990, unless otherwise noted.

DEFINITIONS

§ 1210.500 Terms defined.

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

GENERAL

§ 1210.501 Realignment of districts.

In accordance with §1210.320(c) of the Plan, the districts shall be as follows:

(a) *District 1*—The State of Florida.

(b) *District 2*—The State of Georgia.

(c) *District 3*—The States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(d) *District 4*—The States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC.

(g) *District 5*—The States of Alaska, Arizona, California, Colorado, Hawaii,

Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

[85 FR 56475, Sept. 14, 2020]

§ 1210.502 Board members.

The Board consists of 10 producers, 10 handlers, nine importers, and one public member appointed by the Secretary.

[85 FR 56475, Sept. 14, 2020]

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board monthly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800 Feb. 28, 1995]

ASSESSMENTS

§ 1210.515 Levy of assessments.

(a) An assessment of three cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of three cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of six cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Scheudle of the United States of any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

(c) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800, Feb. 28, 1995; 72 FR 41428, July 30, 2007; 72 FR 61051, Oct. 29, 2007]

§ 1210.516 Exemption for organic watermelons.

(a) A producer or handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or handler regardless of whether the agricultural commodity subject to the exemption is produced or handled by a person that also produces or handles conventional or nonorganic

agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer or handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible producer or handler shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or handler continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer or handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' watermelons on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

[70 FR 2756, Jan. 14, 2005, as amended at 80 FR 82026, Dec. 31, 2015]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(5) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(6) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(7) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

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

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/ Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

(11) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(12) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 58 FR 3356, Jan. 8, 1993]

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment

on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) *Responsibility for payment.* (1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (b) and (e) of this section, each handler and importer shall remit the required producer and handler assessments, pursuant to §1210.341 of the Plan, directly to the Board not later than 30 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to §1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 30 days after the end of the month such assessments are due.

(2) Pursuant to §1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

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

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than 10 acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

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

(4) *Prepayment of assessments.* (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 30 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report

on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

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

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler and importer who fails to make timely remittance to the Board of the total producer and handler and importer assessments for which any such handler and importer is liable. Such late payment shall be imposed on any assessments not received before the fortieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 30 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts for which payment has not been received by the last day of the second month following the month of handling; *Provided*, that, handlers paying their assessments in accordance with paragraph (c)(4)(ii), will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (c)(4)(ii). Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

[55 FR 13256, Apr. 10, 1990; 55 FR 20443, May 17, 1990, as amended at 56 FR 15808, Apr. 18, 1991; 60 FR 10801, Feb. 28, 1995]

§ 1210.519 Failure to report and remit.

Any handler and importer who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the handler's and importer's books and records to determine the amount owed the Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

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

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) *Application form.* The Board shall make available to all importers a refund application form.

(b) *Submission of refund application to the Board.* The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported.

The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) *Payment of refund.* Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

[60 FR 10801, Feb. 28, 1995]

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[60 FR 10801, Feb. 28, 1995]

RECORDS

§ 1210.530 Retention period for records.

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

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

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

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.531 Availability of records.

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

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

[60 FR 10801, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.540 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0581–0093, except that Board member nominee background information sheets are assigned OMB Control Number 0505–0001.

[58 FR 3356, Jan. 8, 1993]

Subpart D—Referendum Procedures

SOURCE: 66 FR 56388, Nov. 7, 2001; 67 FR 17907, Apr. 12, 2002, unless otherwise noted.

§ 1210.600 General.

Referenda to determine whether eligible producers, handlers, and importers favor the continuation, suspension, termination, or amendment of the Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.601 Definitions.

Unless otherwise defined in this section, the definition of terms used in

these procedures shall have the same meaning as the definitions in the Plan.

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

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

(c) *Eligible handler* means any person (except a common contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production, subject to the provisions of §1210.602(a) of this chapter, who handles watermelons as a person performing a handling function and either:

(1) Takes title or possession of watermelons from a producer and directs the grading, packing, transporting, and selling of the watermelons in the current of commerce;

(2) Purchases watermelons from producers;

(3) Purchases watermelons from handlers;

(4) Purchases watermelons from importers; or

(5) Arranges the sale or transfer of watermelons from one party to another and takes title or possession of the watermelons: *Provided*, That harvest crews and common carriers who collect and transport watermelons from the field to a handler are not handlers and that retailers, wholesale retailers, foodservice distributors, and foodservice operators are not handlers.

(d) *Eligible importer* means any person who imports 150,000 pounds or more watermelons annually into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States. An importer who imports less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments is also an eligible importer.

(e) *Eligible producer* means any person who is engaged in the growing of 10 or more acres of watermelons, including any person who owns or shares the ownership and risk of loss of such watermelon crop. A person who shares the ownership and risk of loss includes a person who:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon. Ownership of, or leasehold interest in land, and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not producers for the purposes of this subpart.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of watermelons for market and the authority to transfer title to the watermelons so produced, handled, or imported.

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

(h) *Representative period* means the period designated by the Secretary pursuant to the Act.

§ 1210.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided,* That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that the individual is an officer, employee of the producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity and that the individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) *Casting of ballots.* All ballots are to be cast as instructed by the Secretary.

[66 FR 56388, Nov. 7, 2001, as amended at 79 FR 17852, Mar. 31, 2014]

§ 1210.603 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this section, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot. However, such persons may be required to submit evidence of their eligibility.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1210.604 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1210.605 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot,

and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1210.606 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1210.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

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NATIONAL HONEY BOARD

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AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 73 FR 11472, Mar. 3, 2008, unless otherwise noted.

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

SOURCE: 73 FR 29397, May 21, 2008, unless otherwise noted.

DEFINITIONS

§ 1212.1 Act.

''Act'' means the Commodity Promotion, Research, and Information Act of 1996, (7 U.S.C. 7411–7425), and any amendments to that Act.

§ 1212.2 Board.

''Board'' or ''National Honey Board'' means the administrative body established pursuant to §1212.40, or such other name as recommended by the Board and approved by the Department.

[84 FR 1345, Feb. 4, 2019]

§ 1212.3 Conflict of interest.

''Conflict of interest'' means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1212.4 Department.

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

§ 1212.5 Exporter.

''Exporter'' means any person who exports honey or honey products from the United States.

§ 1212.6 First handler.

''First handler'' means the first person who buys or takes possession of honey or honey products from a producer for marketing. If a producer markets honey or honey products directly to consumers, that producer shall be considered to be the first handler with respect to the honey produced by the producer.

§ 1212.7 Fiscal period.

''Fiscal period'' means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1212.8 Handle.

''Handle'' means to process, package, sell, transport, purchase or in any other way place honey or honey products, or causes them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

§ 1212.9 Honey.

''Honey'' means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

§ 1212.10 Honey products.

''Honey products'' mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

§ 1212.11 Importer.

''Importer'' means any person who imports for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces honey or honey products outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

§ 1212.12 [Reserved]

§ 1212.13 Information.

''Information'' means activities or programs designed to develop new and existing markets, new and existing marketing strategies and increased efficiency and activities to enhance the image of honey and honey products. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of honey and honey products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the honey industry, and activities to enhance the image of the honey industry.

§ 1212.14 Market or marketing.

(a) ''Marketing'' means the sale or other disposition of honey or honey products in any channel of commerce.

(b) ''Market'' means to sell or otherwise dispose of honey or honey products in interstate, foreign, or intrastate commerce.

§ 1212.15 Order.

''Order'' means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

§ 1212.16 Part and subpart.

''Part'' means the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Order) and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1212.17 Person.

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

§ 1212.18 Plans and programs.

''Plans and programs'' mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1212.19 Producer.

''Producer'' means any person who is engaged in the production and sale of honey in any State and who owns, or shares the ownership and risk of loss of the production of honey or a person who is engaged in the business of producing, or causing to be produced, honey beyond personal use and having value at first point of sale.

§ 1212.20 Promotion.

''Promotion'' means any action, including paid advertising and public relations that presents a favorable image for honey or honey products to the public and food industry with the intent of improving the perception and competitive position of honey and stimulating sales of honey or honey products.

§ 1212.21 Qualified national organization representing first handler interests.

''Qualified national organization representing first handler interests'' means an organization that the Secretary certifies as being eligible to nominate first handler and alternate first handler members of the Board under § 1212.42.

§ 1212.22 Qualified national organization representing importer interests.

''Qualified national organization representing importer interests'' means an organization that the Secretary certifies as being eligible to nominate importer and alternate importer members of the Board under § 1212.42.

[84 FR 1345, Feb. 4, 2019]

§ 1212.23 Qualified national organization representing producer interests.

''Qualified national organization representing producer interests'' means an organization that the Secretary certifies as being eligible to nominate producer and alternate producer members of the Board under § 1212.42.

§ 1212.24 Qualified national organization representing cooperative interests.

''Qualified national organization representing cooperative interests'' means an organization that the Secretary certifies as being eligible to nominate cooperative and alternate cooperative members of the Board under § 1212.42.

§ 1212.25 Referendum.

''Referendum'' means a referendum to be conducted by the Secretary pursuant to the Act whereby first handlers and importers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum and a majority of volume voted in the referendum.

§ 1212.26 Research.

''Research'' means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of honey and honey products, including research relating to nutritional value, cost of production, new product development, testing the effectiveness of market development and promotion efforts. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

§ 1212.27 Secretary.

''Secretary'' means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority the Secretary delegated the authority to act on his or her behalf.

§ 1212.28 Suspend.

''Suspend'' means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1212.29 State.

''State'' means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.30 Terminate.

''Terminate'' means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1212.31 United States.

''United States'' means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.32 United States Customs Service.

''United States Customs Service'' or ''Customs'' means the United States Customs and Border Protection, an agency of the Department of Homeland Security.

NATIONAL HONEY BOARD

§ 1212.40 Establishment and membership.

The National Honey Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, three importer representatives, three producer representatives, and one marketing cooperative representative. In addition, each producer representative must produce a minimum of 50,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall

also appoint an alternate for each member.

[84 FR 1345, Feb. 4, 2019]

§ 1212.41 Term of office.

Each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms. Each term of office will end on December 31, with new terms of office beginning on January 1.

[84 FR 1345, Feb. 4, 2019]

§ 1212.42 Nominations and appointments.

All nominations to the Board will be made as follows:

(a) All qualified national organizations representing first handler interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the first handler positions and the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing first handler interests, individual first handlers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of first handlers as defined in this subpart will certify their qualification and upon certification, if qualified, may submit nominations.

(b) All qualified national organizations representing importer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for importer positions and the importer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period may submit nominations.

(c) All qualified national organizations representing producer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the producer positions and the producer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing producer interests, individual producers may submit nominations to the Secretary. For the initial Board, persons that meet the definition of producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(d) For the purposes of this subpart, a national honey-marketing cooperative means any entity that is organized under the Capper-Volstead Act (7 U.S.C. 291) or state law as a cooperative and markets honey or honey products in at least 20 states. All national honey-marketing cooperatives that are first handlers will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary of persons who serve as an officer, director, or employee of a national honey marketing cooperative for the cooperative position and the alternate position on the Board.

(e) Eligible organizations, cooperatives, producers, first handlers or importers must submit nominations to the Secretary six months before the new Board term begins. At least two nominees for each position to be filled must be submitted.

(f) Qualified national organization representing first handler interests. To be certified by the Secretary as a qualified national organization representing first handler interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's voting membership must be comprised primarily of first handlers of honey or honey products;

(2) The organization must represent a substantial number of first handlers who market a substantial volume of honey or honey products in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as a primary purpose promoting honey first handlers' economic welfare;

(5) The organization must derive a portion of its operating funds from first handlers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(g) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's importer membership must represent at least a majority of the volume of honey or honey products imported into the United States;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must have as a primary purpose promoting honey importers' economic welfare;

(4) The organization must derive a portion of its operating funds from importers; and

(5) The organization must demonstrate it is willing and able to further the Act's purposes.

(h) Qualified national organization representing producer interests. To be certified by the Secretary as a qualified national organization representing producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's membership must be comprised primarily of honey producers;

(2) The organization must represent a substantial number of producers who produce a substantial volume of honey in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as one of its primary purposes promoting honey producers' economic welfare;

(5) The organization must derive a portion of its operating funds from producers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(i) To be certified by the Secretary as a qualified national organization representing first handler, producer or importer interests, an organization must agree to:

(1) Take reasonable steps to publicize to non-members the availability of open Board first handler, producer or importer positions; and

(2) Consider nominating a non-member first handler, producer or importer, if he or she expresses an interest in serving on the Board.

(j) National honey-marketing cooperative. The Secretary can certify that an entity qualifies as a national honey-marketing cooperative, as defined in §1212.42(d). Such an entity shall not be eligible for certification as a qualified national organization representing producer interests.

[73 FR 29397, May 21, 2008, as amended at 84 FR 1345, Feb. 4, 2019]

§1212.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause.

(c) A vacancy for any reason will be filled as follows:

(1) If a member position becomes vacant, the alternate for that position will serve the remainder of the member's term. In accordance with §1212.42, the Secretary will request nominations for a replacement alternate and will appoint a nominee to serve the remainder of the term. The Secretary does not have to appoint a replacement if the unexpired term is less than six months.

(2) If both a member position and an alternate position become vacant, in accordance with § 1212.42, the Secretary will request nominations for replacements and appoint a member and alternate to serve the remainder of the term. The Secretary does not have to appoint a new member or alternate if the unexpired term for the position is less than six months.

(3) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Board.

§ 1212.44 Procedure.

(a) A majority of the Board members will constitute a quorum so long as at least one of the members present is an importer member and one of the members present is a first handler member. An alternate will be counted for the purpose of determining a quorum only if a member from his or her membership class is absent or disqualified from participating. Any Board action will require the concurring votes of a majority of those present and voting; with the exception of the two-thirds vote requirement in § 1212.52(f). All votes at meetings will be cast in person. The Board must give timely notice of all Board and committee meetings to members and alternates.

(b) The Board may take action by any means of communication when, in the opinion of the Board chairperson, an emergency requires that action must be taken before a meeting can be called. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Each proposition is explained accurately, fully, and substantially identically to each member;

(3) With the exception of the two-thirds vote requirement in § 1212.52(f), a majority of the members vote in favor of the action; and

(4) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1212.45 Reimbursement and attendance.

Board members and alternates, when acting as members, will serve without compensation but will be reimbursed for reasonable travel expenses, as approved by the Board, that they incur when performing Board business. The Board may request that alternates attend any meeting even if their respective members are expected to attend or actually attend the meeting.

§ 1212.46 Powers.

The Board shall have the following powers subject to § 1212.80:

(a) Administer this subpart in accordance with its terms and provisions of the Act;

(b) Require its employees to receive, investigate, and report to the Secretary complaints of violations of this part;

(c) Recommend adjustments to the assessments as provided in this part;

(d) Recommend to the Secretary amendments to this part;

(e) Establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion, research, and information programs and plans including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products; and

(f) Invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order.

§ 1212.47 Duties.

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

(a) To meet and organize, and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and other industry representatives; and to develop and recommend such rules, regulations, and by-laws to the Secretary for approval to conduct its business as it may deem advisable;

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

the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto.

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part.

(e) To establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products.

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it.

(g) To periodically prepare and make public and to make available to first handlers, producers, and importers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary.

(i) To submit to the Secretary such information pertaining to this part or subpart as he or she may request.

(j) To give the Secretary the same notice of Board meetings and committee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary.

(k) To notify first handlers, importers, and producers of all Board meetings through press releases or other means.

(l) To appoint and convene, from time to time, working committees or subcommittees that may include first handlers, importers, exporters, producers, members of the wholesale or retail outlets for honey, or other members of the honey industry and the public to assist in the development of research, promotion, advertising, and information programs for honey and honey products.

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

(n) To provide any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department.

§ 1212.48 Reapportionment of Board membership.

At least once in each 5-year period, but not more frequently than once in each 3-year period, the Board shall:

(a) Review, based on a three-year average, the geographical distribution in the United States of the production of honey and the quantity or value of the honey and honey products imported into the United States; and

(b) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the production of honey and the quantity or value of the honey and honey products imported into the United States.

EXPENSES AND ASSESSMENTS

§ 1212.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter; the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. The budget shall allocate five percent (5%) of the Board's anticipated revenue from assessments each fiscal period for production research and research relating to the production of honey.

Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

§ 1212.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

§ 1212.52 Assessments.

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers. For the period January 1 through December 31, 2015, the assessment rate shall be $0.0125 per pound of assessable honey and honey products. On and after January 1, 2016, the assessment rate shall be $0.015 per pound of assessable honey and honey products.

(b) Each first handler shall pay the assessment to the Board on all domestically produced honey or honey products the first handler handles. A producer shall pay the Board the assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board on all honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs and Border Protection (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading numbers 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States or any other numbers used to identify honey or honey products.

(f) The Board may recommend to the Secretary an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than $0.02 per pound of honey or honey products and may not increase the assessment by more than $0.0025 in any single fiscal year.

(g) In situations of late payment:

(1) The Board shall impose a late payment charge on any first handler or importer who fails to remit to the Board the total amount for which the first handler or importer is liable on or before the payment due date the Board recommends. The amount of the late payment charge shall be prescribed by the Department.

(2) The Board shall require any first handler or importer subject to a late payment charge to pay interest on the unpaid assessments for which the first handler or importer is liable. The rate of interest shall be prescribed by the Department.

(3) First handlers or importers who fail to remit total assessments in a timely manner may also be subject to actions under federal debt collection procedures.

(h) Advance payment. The Board may accept advance payment of assessments from first handlers or importers that will be credited toward any amount for which the first handlers or importers may become liable. The Board does not have to pay interest on any advance payment.

(i) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed.

[73 FR 11472, Mar. 3, 2008, as amended at 80 FR 22365, Apr. 22, 2015]

§ 1212.53 Exemption from assessment.

(a) A first handler who handles less than 250,000 pounds of honey or honey products per calendar year or an importer who imports less than 250,000 pounds of honey or honey products per calendar year is exempt from paying assessments.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 250,000 of honey and honey products for the calendar year for which the exemption is

claimed. An importer shall certify that the importer will import less than 250,000 pounds of honey and honey products during the calendar year for which the exemption is claimed.

(c) A first handler or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP), or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a first handler or importer regardless of whether the agricultural commodity subject to the exemption is handled or imported by a person that also handles or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(5) Persons eligible for an organic assessment exemption as provided this section may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the first handler or importer continues to be eligible for the exemption.

(i) A first handler or importer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant handles or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Board, with the approval of the Secretary.

(ii) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the first handler or importer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe. It is the responsibility of the first handler or importer to retain a copy of the certificate of exemption.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. The exemption is effective when approved by the Board. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs.

(1) Importers exempt under paragraph (a) of this section must apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement must be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(2) If Customs collects the assessment on exempt product under paragraph (b) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(f) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begin to pay the assessment on all honey or honey products handled or imported.

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board for a certificate of exemption.

(h) The Board may recommend to the Secretary that honey and honey products exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and honey products and any necessary safeguards to prevent improper use of this exemption.

[73 FR 11472, Mar. 3, 2008, as amended at 80 FR 22366, Apr. 22, 2015; 80 FR 82027, Dec. 31, 2015]

§ 1212.54 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1212.55 Prohibition on use of funds.

(a) The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(1) Any action that is a conflict of interest;

(2) Except as otherwise provided in paragraph (b) of this section, using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(3) A program, plan or project conducted pursuant to this subpart that includes false or misleading claims on behalf of honey or honey products.

(4) Any advertising, including promotion, research and information activities authorized that may be false or misleading or disparaging to another agricultural commodity.

(b) The prohibition in paragraph (a)(2) of this section shall not apply:

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

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

PROMOTION, RESEARCH, AND INFORMATION

§ 1212.60 Programs, plans and projects.

(a) Scope of activities. The Board must develop and submit to the Secretary for approval plans and programs authorized by this section. The plans and programs may provide for:

(1) Establishing, issuing, and administering appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products;

(2) Establishing and conducting research and development activities to encourage and expand the acquisition

of knowledge about honey and honey products, their consumption and use, or to encourage, expand or improve the quality, marketing, and utilization of honey and honey products;

(3) Conducting activities that may lead to developing new markets or marketing strategies for honey and honey products;

(4) Conducting activities related to production issues or bee research activities; and

(5) Conducting activities designed to make the honey industry more efficient, to improve the quality of honey or to enhance the image of honey and honey products and the honey industry.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must periodically evaluate each plan and program authorized under this part to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board and the Secretary find that a plan or program does not further the purposes of the Act, then such plan or program should be terminated.

§ 1212.61 Independent evaluation.

The Board must authorize and fund not less than once every five years an independent evaluation of the effectiveness of this subpart and the plans and programs conducted by the Board under the Act. The Board must submit this independent evaluation to the Secretary and make the results available to the public.

§ 1212.62 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this Order, § 1212.83 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1212.70 Reports.

(a) Each first handler or importer subject to this part must report to the Board, at the time and in the manner it prescribes, and subject to the approval of the Secretary, the information the Board deems necessary to perform its duties.

(b) First handlers must report:

(1) The total quantity of honey and honey products acquired during the reporting period;

(2) The total quantity of honey and honey products handled during the period;

(3) The quantity of honey processed for sale from the first handler's own production;

(4) The quantity of honey and honey products purchased from a first handler or importer responsible for paying the assessment due pursuant to this Order;

(5) The date that assessment payments were made on honey and honey products handled; and

(6) The first handler's tax identification number.

(c) Unless provided by Customs, importers must report:

(1) The total quantity of honey and honey products imported during the reporting period;

(2) A record of each lot of honey or honey products imported during such period, including the quantity, date, country of origin, and port of entry; and

(3) The importer of record's tax identification number.

(d) The Board may request any other information from first handlers and importers that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

(e) The Board, with the Secretary's approval, may request that persons claiming an exemption from assessments under §1212.52(b) or (d) must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of exempted honey or honey products.

§ 1212.71 Book and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A first handler or importer must maintain the books and records for three years beyond the fiscal period to which they apply.

[80 FR 22366, Apr. 22, 2015]

§ 1212.72 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected thereof, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

MISCELLANEOUS

§ 1212.80 Right of the Secretary.

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

§ 1212.81 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of first handlers and importers voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of honey or honey products;

(2) At the request of the Board established in this Order;

(3) At the request of ten (10) percent or more of the number of persons eligible to vote under the Order; or

(4) Whenever the Department deems that a referendum is necessary.

(b) *Approval of order.* Approval in a referendum shall be established by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who are first handlers or importers during the representative period by those voting as established by the Secretary.

(c) *Manner of conducting referenda.* A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1212.82 Suspension or termination.

The Secretary shall suspend or terminate the operation of this part or subpart or any provision thereof, if the Secretary finds that this part or subpart or the provision obstructs or does not tend to effectuate the declared policy of the Act.

§ 1212.83 Proceedings after termination.

(a) If this subpart terminates, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, will become trustees of any funds and property the Board possesses or controls at that time and any existing claims it has, including, without limitation, claims for any unpaid or undelivered funds or property.

(b) The trustees will:

(1) Serve until discharged by the Secretary;

(2) Carry out the Board's obligations under any contracts or agreements entered into pursuant to the Order;

(3) Account from time to time for all receipts and disbursements and deliver all property on hand, together with all the Board's and trustees' books and records to any person the Secretary directs; and

(4) Execute at the Secretary's direction any assignments or other instruments necessary or appropriate to vest in any person full title and right to all of the funds, property, and claims owned by the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order will be subject to the same obligations imposed upon Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more honey industry organizations in the interest of continuing honey promotion, research, and information programs.

§ 1212.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this part;

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1212.85 Personal liability.

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

§ 1212.86 Separability.

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

§ 1212.87 Amendments.

Amendments to this Order may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Department.

§ 1212.88 OMB control number.

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, and OMB control number 0581–[NEW, to be assigned by OMB].

Subpart B—Referendum Procedures

§ 1212.100 General.

Referenda to determine whether eligible first handlers and importers of honey and honey products favor the issuance, continuance, amendment, suspension, or termination of the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1212.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

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

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 250,000 or more pounds of domestic honey and honey products during the representative period, who first buys or takes possession of honey or honey products from a producer for marketing. If a producer markets the honey directly to consumers, the producer shall be considered the first handler with respect to the honey produced by the producer.

(d) *Eligible importer* means any person who imports 250,000 or more pounds of honey and honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0409.00.00 and 2106.90.9988, during the representative period. Importation occurs when honey or honey products originating outside of the United States are released from custody by the United States Customs and Border Protection, referred to as the U.S. Customs Service, and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign produced honey or honey products immediately upon release by the U.S. Customs Service, as well as any persons who acts on behalf of others, as agents or brokers, to secure the release of honey or honey products from the U.S. Customs Service when such honey or honey products are entered or withdrawn for consumption in the United States.

(e) *Handle* means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

(f) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(g) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(h) *Order* means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

(i) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

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

(k) *Representative period* means the period designated by the Department.

(l) *United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1212.102 Voting.

(a) Each eligible first handler and eligible importer of honey or honey products shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1212.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Department, have been engaged in the handling or importation of honey or honey products and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1212.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1212.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1212.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1212.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1212.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581-[NEW, to be assigned by OMB].

Subpart C—Past Due Assessments

SOURCE: 83 FR 11139, Mar. 14, 2018, unless otherwise noted.

§ 1212.520 Late payment and interest charges for past due assessments.

(a) A late payment charge will be imposed on any first handler or importer who fails to make timely remittance to the Board of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, ⅔ of 1 percent per month (or an annual rate of 8 percent) interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Christmas Tree Promotion, Research, and Information Order

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Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order

1214.520 Late payment and interest charges for past due assessments.

AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 76 FR 69103, Nov. 8, 2011, unless otherwise noted.

Subpart A—Christmas Tree Promotion, Research, and Information Order

DEFINITIONS

§ 1214.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1214.2 Board.

Board or the Christmas Tree Promotion Board means the administrative body established pursuant to § 1214.40.

§ 1214.3 Christmas tree.

Christmas tree means any tree of the coniferous species, that is severed or cut from its roots and marketed as a Christmas tree for holiday use.

§ 1214.4 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1214.5 Crop year.

Crop year means the period August 1 through July 31 or such other period approved by the Secretary.

[81 FR 38897, June 15, 2016]

§ 1214.6 Customs or CBP.

Customs or CBP means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

§ 1214.7 Department.

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

§ 1214.8 Fiscal period.

Fiscal period means the period August 1 through July 31 or such other period approved by the Secretary.

[81 FR 38897, June 15, 2016]

§ 1214.9 Importer.

Importer means any person importing Christmas trees into the United States in a fiscal period as a principal or as an agent, broker, or consignee of any person who domestically produces Christmas trees outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such Christmas trees.

§ 1214.10 Information.

Information means information, program, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase market efficiency, and enhance the image of Christmas trees and the Christmas tree industry in the United States.

§ 1214.11 Marketing.

Marketing means to sell or otherwise dispose of Christmas trees in interstate, foreign or intrastate commerce.

§ 1214.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1214.13 Part and subpart.

Part means the Christmas Tree Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1214.14 Person.

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

§ 1214.15 Programs, plans and projects.

Programs, plans and projects mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1214.16 Produce.

Produce means to engage in the cutting and selling of Christmas trees for the holiday market.

§ 1214.17 Producer.

Producer means any person who is engaged in the production of Christmas trees in the United States, and who owns, or shares the ownership and risk of loss of the production of Christmas trees or a person who is engaged in the business of producing, or causing to be domestically produced, Christmas trees beyond personal use and having value at first point of sale.

§ 1214.18 Promotion.

Promotion means any action, including paid advertising and public relations that presents a favorable image of Christmas trees to the general public with the intent of improving the perception and competitive position of Christmas trees and stimulating sales of Christmas trees.

§ 1214.19 Research.

Research means any type of test, systematic study, study, investigation, analysis and/or evaluation designed to advance the image, desirability, use, marketability, quality, product development, or production of Christmas trees, including but not limited to research related to cost of production, market development, testing the effectiveness of market development and promotional efforts, new species of Christmas trees and environmental issues relating to the Christmas tree industry.

§ 1214.20 Secretary.

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

§ 1214.21 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1214.22 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C. to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1214.23 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C. to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1214.24 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

CHRISTMAS TREE PROMOTION BOARD

§ 1214.40 Establishment and membership.

(a) *Establishment of the Christmas Tree Promotion Board*. There is hereby established a Christmas Tree Promotion Board, composed of no more than twelve (12) members as follows:

(1) Producer members from each of the following regions:

(i) Five producer members from Region #1—Western Region (states from the Pacific Ocean east to the Rocky Mountains): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and all U.S. Territories located in the Pacific Ocean.

(ii) Two producer members from Region #2—Central Region (states east of the Rocky Mountains to the Great Lakes): Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin.

(iii) Four producer members from Region #3—Eastern Region (states east of the Great Lakes): Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, New York, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, Washington, DC, West Virginia, and all U.S. Territories located in the Atlantic Ocean and Caribbean Sea, including but not limited to Puerto Rico.

(2) One Importer member.

(b) *Adjustment of membership*. At least once every five years upon implementation of the Order, but not more frequently than once every three years, the Board will review the geographic distribution of United States production of Christmas trees and the quantity and source of Christmas tree imports. The review will be conducted through State crop production figures and Board assessment records, including the amount of assessments collected from importers, or other government data. If warranted, the Board will recommend to the Secretary that membership on the Board be altered to reflect any changes in geographic distribution of domestic Christmas tree production and the quantity of imports. *Provided*, that there shall be at least one importer member on the Board. Such adjustments shall not increase the total number of Board members. The adjustments to the Board membership would be submitted to the Secretary by Board recommendation and be implemented by the Secretary through rulemaking.

§ 1214.41 Nominations and appointments.

(a) Voting for producer members will be made by mail ballot, electronic mail, in person, or by facsimile.

(b) Nominations for the initial Board will be conducted by the Department. Subsequent nominations will be conducted by the Board.

(c) The Board shall outreach to all segments of the Christmas tree industry and solicit nominations as described in paragraphs (d) and (e) of this section. Nominees must domestically produce or import more than 500 Christmas trees during the most recent fiscal period.

(d) Nomination of producer members will be conducted by the Board. The Board staff will seek nominations for each vacant producer seat from each region from producers who have paid their assessments to the Board in the most recent fiscal period. Producers who produce Christmas trees in more than one region may seek nomination only in the region in which they produce the majority of their Christmas trees. For selection to the initial Board, the Secretary will notify producers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to producers in each region for a vote. Producers who produce Christmas trees in more than one region may only vote in the region in which they produce the majority of their Christmas trees. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees. The Board shall submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Nominations for the importer member(s) will be conducted by the Board. The Board will solicit importer nominations from those importers who have paid their assessments to the Board in the most recent fiscal period. For selection to the initial Board, the Secretary will notify importers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to importers for a vote. The Board shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. Two nominees for each importer position will be submitted to the Secretary for consideration.

(f) From the nominations, the Secretary shall select the members of the Board for each position on the Board. Members will serve until their successors have been appointed by the Secretary.

§ 1214.42 Term of office.

Board members will serve for a term of three years and be able to serve a maximum of two consecutive three-year terms. When the Board is first established, the members will be assigned initial terms of two, three, and four years. Initial terms will be staggered to assure continuity of the Board. The term of office will begin on January 1 and conclude on December 31. Members serving the initial term of two and four years will be eligible to serve a second term of three-years. Thereafter, each of the positions will carry a full three-year term. Board members shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed and have qualified.

§ 1214.43 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of membership from which the member was appointed to the Board, such position shall automatically become vacant.

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

(c) Should any member position become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in § 1214.41. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1214.44 Procedure.

(a) At a Board meeting, it will be considered a quorum when a majority of the Board members is present.

(b) All Board members will receive a minimum of 14 days advance notice of all Board and committee meetings, except when emergency circumstances exist and meetings need to be held prior to the advance notice.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board. For any action of the Board to pass, at least a majority of the Board members present must vote in support of such action.

(d) The Board may appoint committees as necessary. It will be considered a quorum at a committee meeting when at least a majority of those appointed to the committee are present. Committees may consist of persons other than Board members, and such persons may vote in committee meetings as the Board shall determine. These committee members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) A majority of the members vote in favor of the action; and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

(f) There shall be no voting by proxy.

(g) The chairperson shall be a voting member.

§ 1214.45 Compensation and reimbursement.

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

§ 1214.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate, provided that the committee and subcommittee members may also include individuals other than Board members;

(d) To notify producers and importers of all Board meetings through press releases or other means;

(e) To give the Secretary the same notice of meetings of the Board and committees as is given to members, including committee members if committee members are not members of the Board, in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board and all committees to the Secretary;

(f) To appoint and convene, from time to time, committees that may include importers, exporters, producers or other members of the Christmas tree industry and public to assist in the development of research, promotion, advertising, and information programs for Christmas trees;

(g) To employ persons, other than members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

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

(i) To furnish to the Secretary any information or records that the Secretary may request;

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

(k) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(l) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(m) To develop and carry out generic promotion, research, and information activities relating to Christmas trees;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, evaluation, and information designed to strengthen the Christmas tree industry's position in the marketplace; maintain and expand existing markets for Christmas trees; and to carry out programs, plans, and projects designed to provide maximum benefits to the Christmas tree industry;

(o) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers necessary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(p) To prepare and submit for approval of the Secretary, within 60 days after assessments are due to the Board, rates of assessment and a fiscal period budget of the anticipated expenses to be incurred in the administration of the Order, in accordance with §1214.50;

(q) To borrow funds necessary for the startup expenses of the order;

(r) To invest assessments collected under this part in accordance with §1214.50;

(s) To pay the cost of the activities with assessments collected under §1214.52;

(t) To recommend adjustments to the assessments as provided in §1214.52;

(u) To periodically prepare, make public and to make available to producers and importers, reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended; and

(v) To cause its books to be audited by an independent certified public accountant at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary.

§1214.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake

any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or any subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Christmas trees of all origins shall be treated equally.

EXPENSES AND ASSESSMENTS

§ 1214.50 Budget and expenses.

(a) Within 60 days after assessments are due to the Board, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. Each budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year, except for the initial budget;

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this part.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any such funds borrowed by the Board shall be expended for startup costs and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) In accordance with §1214.54, the Board shall deposit funds in a refund escrow account and shall not use such funds for expenses, except as provided for in that section.

(h) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(i) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

(j) For fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in a fiscal year an amount that exceeds 10 percent of the assessment and other income received by the Board. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(k) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided:* That, the funds in the reserve do not exceed one fiscal period's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(l) Pending disbursement of assessments and all other revenue under a

budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

§ 1214.51 Financial statements.

(a) The Board shall prepare and submit quarterly financial statements to the Secretary, or at any other time requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 45 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§ 1214.52 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers, importers, and donations from any person including those not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to §1214.62 and subject to the limitations contained therein.

(b) The payment of assessments on domestic Christmas trees that are cut and sold will be the responsibility of the producer who produces the Christmas trees or causes the trees to be cut.

(c) Each importer of Christmas trees shall pay the assessment to the Board on Christmas trees imported for marketing in the United States, through Customs. If Customs does not collect an assessment from an importer, the importer will be responsible for paying the assessment directly to the Board 30 calendar days after importation.

(1) The assessment rate for imported Christmas trees shall be the same or equivalent to the rate for Christmas trees domestically produced in the United States.

(2) The import assessment shall be uniformly applied to imported Christmas trees that are identified by the numbers 0604.91.00.20, 0604.91.00.40, and 0604.91.00.60 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify Christmas trees in that schedule.

(3) The assessments due on imported Christmas trees shall be paid when they enter into the United States.

(d) Such assessments shall be levied at an initial rate of 15 cents per Christmas tree domestically produced or imported into the United States. The assessment rate will be reviewed by the Board, after the initial referendum is conducted pursuant to this subpart. The assessment rate may be increased or decreased no more than 2 cents per Christmas tree during the fiscal period. Any change in the assessment rate shall be subject to rulemaking by the Department. The assessment rate shall not exceed 20 cents per Christmas tree, nor shall it be less than 10 cents per Christmas tree, unless a majority of producers and importers approve such other levels of assessment through a referendum conducted pursuant to this subpart.

(e) All assessment payments and reports will be submitted to the office of the Board. All assessment payments are to be received no later than February 15 of the crop year in which they are produced or imported. A late payment charge, may be imposed on any producer or importer who fails to remit to the Board, the total amount for which any such producer or importer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge may be imposed on the outstanding amount for which the producer or importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking.

(f) Persons failing to remit total assessments due in a timely manner may

also be subject to actions under federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1214.53 Exemption from and refunds of assessments.

(a) *Producers that domestically produce and importers that import less than 500 Christmas trees.* (1) Any producer who domestically produces less than 500 Christmas trees who desires to claim an exemption from assessments as provided in §1214.52 shall file an application on a form provided by the Board, for a certificate of exemption. Such producer shall certify that he/she will domestically produce less than 500 trees for the fiscal period for which the exemption is claimed. It is the responsibility of the producer to retain a copy of the certificate of exemption.

(2) Any importer who imports less than 500 trees in a fiscal period who desires to claim an exemption from assessments as provided in §1214.52 shall file an application on a form provided by the Board, for a certificate of exemption. Such importer shall certify that the importer's total imports of Christmas trees are fewer than 500 trees for the fiscal period for which the exemption is claimed. It is the responsibility of the importer to retain a copy of the certificate of exemption.

(3) On receipt of an exemption application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one.

(4) The Board, with the Secretary's approval, may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Christmas trees and, in the case of importers, proof of payment of assessments.

(5) The exemption will apply immediately following the issuance of the certificate of exemption.

(6) Producers and importers who received an exemption certificate from the Board but domestically produced or imported more than 500 Christmas trees during the fiscal period shall pay the Board the applicable assessments owed and submit any necessary reports to the Board pursuant to §1214.70.

(7) Producers and importers who did not apply to the Board for an exemption and domestically produced or imported less than 500 Christmas trees during the fiscal period shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the producers and importers accordingly.

(8) The Board may develop additional procedures as it deems necessary for accurately accounting for this exemption. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Assessment refunds to importers.* (1) Importers who are exempt from assessment shall be eligible for a refund of assessments collected by Customs during the applicable fiscal period. No interest will be paid on assessments collected by Customs. The Board shall refund such importers their assessments as collected by Customs no later than 60 calendar days after receipt by the Board.

(c) *Organic.* (1) A producer who domestically produces Christmas trees under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports Christmas trees that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Christmas trees on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of the Certificate of Exemption.

[76 FR 69103, Nov. 8, 2011, as amended at 80 FR 82028, Dec. 31, 2015]

§ 1214.54 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to 10 percent of the assessments collected during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

(b) If the Order is not approved by the required referendum, the Board shall promptly pay refunds of assessments to all producers and importers that have paid assessments during the

period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of all refunds that producers and importers subject to the Order have a right to receive, the Board shall prorate the amount deposited in such account among all producers and importers who desire a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 30 days after the announcement of the referendum results of their request for a refund of the assessments that they paid. The producers and importer requesting a refund shall also submit documentation to substantiate that assessments were paid. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

(e) If the Order is approved by the required referendum conducted under §1214.71 then:

(1) The escrow account shall be closed; and,

(2) The funds shall be available to the Board for disbursement under §1214.50.

PROMOTION, RESEARCH AND INFORMATION

§1214.60 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer industry information, with respect to Christmas trees;

(2) The establishment and conduct of research with respect to the image, desirability, use, marketability, quality, product development or production of Christmas trees, to the end that the marketing and use of Christmas trees may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of Christmas trees.

(b) A program, plan, or project may not be implemented prior to approval of the program, plan, or project by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

§1214.61 Independent evaluation.

The Board shall, not less often than once every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§1214.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board, shall be considered

income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1214.83 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1214.70 Reports.

(a) Each producer and importer subject to this subpart shall be required to provide to the Board periodically such information as required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of trees produced or total imports;

(2) Number of Christmas trees on which an assessment was paid;

(3) Name and address of producer or importer; and

(4) Date assessment was paid on each Christmas tree produced or imported.

(b) All reports required under §1214.70 are due to the Board by February 15 of the crop year.

(c) This report shall accompany the payment of the collected assessments.

§ 1214.71 Books and records.

Each producer and importer subject to this subpart, including those who are exempt under this subpart, shall maintain any books and records necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1214.72 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1214.80 Right of the Secretary.

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

§ 1214.81 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this Order favor the amendment, continuation, suspension, amendment, or termination of this Order, the Secretary shall conduct a referendum among persons subject to assessments under §1214.52 who, during a representative period determined by the Secretary, have engaged in the production or importation of Christmas trees:

(1) The first referendum shall be conducted not later than 3 years after assessments first begin under the Order;

(2) The order will be approved in a referendum if:

(i) A majority of producers and importers vote for approval in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether producers and importers favor the continuation, suspension, or termination of the Order;

(2) Every seven years the Secretary shall hold a referendum to determine whether producers and importers of Christmas trees favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who have been engaged in the production or importation of Christmas trees;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

§ 1214.82 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purpose of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of producers and importers voting in a referenda who, during a representative period determined by the Secretary, have been engaged in the production or importation of Christmas trees.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1214.83 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more Christmas tree organizations in the United States in the interest of continuing Christmas tree promotion, research, and information programs.

§ 1214.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder.

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder.

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1214.85 Personal liability.

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

§ 1214.86 Separability.

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

§ 1214.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1214.88 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, and OMB control number 0581–0267 and 0581–0268.

Subpart B—Referendum Procedures

SOURCE: 76 FR 69113, Nov. 8, 2011, unless otherwise noted.

§ 1214.100 General.

Referenda to determine whether eligible domestic producers and importers of Christmas trees favor the continuance, amendment, suspension, or termination of the Christmas Tree Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1214.101 Definitions.

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

(b) *Customs* means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

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

(d) *Eligible domestic producer* means any person who domestically produces more than 500 Christmas trees annually in the United States, and who:

(1) Owns, or shares the ownership and risk of loss of the production of Christmas trees;

(2) Rents Christmas tree production land, facilities and/or equipment resulting in the ownership of all or a portion of the Christmas trees domestically produced;

(3) Owns Christmas tree production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Christmas trees domestically produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas trees who share the risk of loss and receive a share of the Christmas trees domestically produced. No other acquisition of legal title to Christmas trees shall be deemed to result in persons becoming eligible domestic producers.

(e) *Eligible importer* means any person importing more than 500 Christmas trees annually into the United States as a principal or as an agent, broker, or consignee of any person who domestically produces or handles Christmas trees outside of the United States for sale in the United States, and who is listed as the importer of record for such Christmas trees that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0604.91.00.20, 0604.91.00.40, and 0604.91.00.60 during the representative period. Importation occurs when Christmas trees originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Christmas trees immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Christmas trees from Customs when such Christmas trees are entered or withdrawn for consumption in the United States.

(f) *Christmas tree* means any tree of the coniferous species, that is severed or cut from its roots and marketed as a Christmas tree for holiday use.

(g) *Order* means the Christmas Tree Promotion, Research, and Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Christmas tree farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

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

(j) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1214.102 Voting.

(a) Each eligible domestic producer and eligible importer of Christmas trees shall be entitled to cast only one ballot in the referendum. However, each domestic producer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas trees, in which more than one of the parties is a domestic producer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

(d) Eligible domestic producers or eligible importers may be asked to provide proof of sales or acreage as proof of eligibility to vote in any referendum.

§ 1214.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible domestic producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1214.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1214.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1214.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1214.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1214.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0267.

Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order

SOURCE: 81 FR 38897, June, 15, 2016, unless otherwise noted.

§ 1214.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any producer or importer

who fails to make timely remittance to the Board of the total assessments for which such producer or importer is liable. The late payment charge will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be $250 and will be increased to $500 after 90 days of delinquency.

(b) In addition to the late payment charge, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 30 calendar days after the date the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

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AUTHORITY: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

SOURCE: 62 FR 39389, July 22, 1997, unless otherwise noted.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

DEFINITIONS

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

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

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been

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

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

POPCORN BOARD

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of five members. The number of members on the board may be changed by rulemaking: *Provided*, that the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

[62 FR 39389, July 22, 1997, as amended at 75 FR 67610, Nov. 3, 2010]

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations made in accordance with paragraph (a).

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

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

(d) No Board member may serve more than two consecutive three-year terms, except as provided in §1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service will be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in

the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects;

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

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

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

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

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1215.40 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan or project authorized under this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board may take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

(a) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

(c) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(d) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

EXPENSES AND ASSESSMENTS

§ 1215.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

(2) A statement of the objectives and strategy for each program, plan, or project;

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

(4) A summary of proposed expenditures for each program, plan, or project; and

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected on exported popcorn (excluding Canada).

(d) The Board is authorized to incur such reasonable expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in section 75(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: *Provided,* That the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15 percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in paragraph §1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) Persons that operate under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a processor regardless of whether the agricultural commodity subject to the exemption is processed by a person

that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

[70 FR 2757, Jan. 14, 2005, as amended at 80 FR 82028, Dec. 31, 2015]

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under §1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to §1215.62 and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed or in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words ''final report'' shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part.

(b) No information obtained under the authority of this part may be made available to any agency or officer of

the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this part or statistical data collected therefrom, which statements do not identify the information furnished by any person;

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee, or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

MISCELLANEOUS

§ 1215.70 Right of the Secretary.

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

§ 1215.71 Suspension or termination.

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

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

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

(b) The trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

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

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

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be

subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1215.74 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, §1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1215.77 Separability.

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

Subpart B—Rules and Regulations

DEFINITIONS

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

EXEMPTION PROCEDURES

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in §1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Persons eligible for an organic assessment exemption as provided in §1215.52(b) may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request*

Form (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the processor continues to be eligible for the exemption.

(c) A processor request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the processor within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(g) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

[62 FR 39389, July 22, 1997, as amended at 70 FR 2757, Jan. 14, 2005; 80 FR 82028, Dec. 31, 2015]

MISCELLANEOUS

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Peanut Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 64 FR 20105, Apr. 23, 1999, unless otherwise noted.

Subpart A—Peanut Promotion, Research, and Information Order

SOURCE: 64 FR 41256, July 29, 1999, unless otherwise noted.

DEFINITIONS

§ 1216.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

§§ 1216.2–1216.3 [Reserved]

§ 1216.4 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.5 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.6 [Reserved]

§ 1216.7 Department.

Department means the U.S. Department of Agriculture.

§ 1216.8 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.9 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year means the 12-month period beginning with November 1 of any year and ending with October 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

[83 FR 27686, June 14, 2018]

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided*, that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and: *Provided further*, that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

[86 FR 72151, Dec. 21, 2021]

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

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

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain a 3-year average production of at least 20,000 tons of peanuts.

[86 FR 72151, Dec. 21, 2021]

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts

and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.23 Promotion.

Promotion means any action taken by the Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 [Reserved]

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

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

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order, or part thereof, during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order, or part thereof, beginning on a date certain specified in the rule.

§ 1216.30 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

NATIONAL PEANUT BOARD

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board.* There is hereby established a National Peanut Board, hereinafter called the Board, comprised of no more than 12 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Eleven members and alternates.* One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) *Adjustment of membership.* At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

[64 FR 41256, July 29, 1999, as amended at 73 FR 14921, Mar. 20, 2008; 79 FR 15639, Mar. 21, 2014; 85 FR 16231, Mar. 23, 2020; 86 FR 72151, Dec. 15, 2021]

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and

qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

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

§ 1216.48 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted,

submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with §1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

§1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from

one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practcable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata Share of funds available for that State as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds necessary to pay for programs and other costs authorized by this part shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer or first purchaser/handler and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied on all farmers stock peanuts sold at a rate of $3.55 per ton for Segregation 1 peanuts and $1.25 per ton for Segregation 2 peanuts and 3 peanuts, as those terms are defined in §§996.13(b)–(d) of this title.

(d) For peanuts placed under a marketing assistance loan with the Department's Commodity Credit Corporation, the Commodity Credit Corporation, or

any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, the assessment per ton as specified in paragraph (c) of this section, no more than 60 days after the last day of the month in which the peanuts were placed under a marketing assistance loan.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

[70 FR 55226, Sept. 21, 2005, as amended at 83 FR 27686, June 14, 2018]

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this

subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

§ 1216.56 Exemption for organic peanuts.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OPFA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before August 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells peanuts. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

[70 FR 2757, Jan. 14, 2005, as amended at 80 FR 82029, Dec. 31 2015]

REPORTS, BOOKS, AND RECORDS

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Certification of Peanut Producer Organizations

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of the organization's active membership accounted for by producers, a map showing the peanut-producing counties in the state in which the organization has members, the volume of peanuts produced in each county, the number of peanut producers in each county, and the size of the organization's active peanut producer membership in each county;

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

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

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

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

MISCELLANEOUS

§ 1216.80 Right of the Secretary.

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

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an Orderly manner.

§ 1216.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the

Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to §1216.70, in the interest of continuing peanut promotion, research, and information programs.

§1216.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§1216.85 Personal liability.

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

§1216.86 Separability.

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

§1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1216.82 shall apply to determine disposition of all such property.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

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

§ 1216.101 Definitions.

The following definitions apply to this subpart:

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

(b) *Order* means the Peanut Promotion, Research, and Information Order.

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

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Peanut Promotion, Research, and Information Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1216.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1216.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

Subpart A—Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order

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AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 76 FR 22755, Apr. 22, 2011, unless otherwise noted.

Subpart A—Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order

SOURCE: 76 FR 46193, Aug. 2, 2011, unless otherwise noted.

DEFINITIONS

§ 1217.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1217.2 Blue Ribbon Commission or BRC.

Blue Ribbon Commission or *BRC* means the 21-member committee representing businesses that manufacture softwood lumber in the United States or import softwood lumber to the United States formed to pursue an industry research, promotion, and information program.

§ 1217.3 Board or Softwood Lumber Board.

Board or *Softwood Lumber Board* means the administrative body established pursuant to §1217.40, or such other name as recommended by the Board and approved by the Department.

§ 1217.4 Board foot.

Board foot or *BF* means a unit of measurement of softwood lumber represented by a board 12-inches long, 12-inches wide, and 1-inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width and the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

§ 1217.5 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1217.6 Customs or CBP.

Customs or CBP means Customs and Border Protection, an agency of the United States Department of Homeland Security.

§ 1217.7 Department or USDA.

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

§ 1217.8 Domestic manufacturer.

Domestic manufacturer means any person who is a first handler and is engaged in the manufacturing, sale and shipment of softwood lumber in the United States during a fiscal period and who owns, or shares in the ownership and risk of loss of manufacturing of softwood lumber or a person who is engaged in the business of manufacturing, or causes to be manufactured, sold and shipped such softwood lumber in the United States beyond personal use. This term does not include any person who re-manufactures softwood lumber that has already been subject to assessment under this Order.

§ 1217.9 Export.

Export means to manufacture and ship softwood lumber from within the United States to locations outside of the United States.

§ 1217.10 Fiscal period or year.

Fiscal period or year means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1217.11 Importer.

Importer means any person who imports softwood lumber from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who manufactures softwood lumber outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such softwood lumber.

§ 1217.12 Information.

Information means activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of softwood lumber and the forests from which it comes. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding softwood lumber; and

(b) Industry information, which means information and programs that would enhance the image of the softwood lumber industry.

§ 1217.13 Manufacture.

Manufacture means the process of transforming softwood logs into softwood lumber.

§ 1217.14 Manufacturer for the U.S. market.

Manufacturer for the U.S. market means domestic manufacturers and importers of softwood lumber as defined in this Order.

§ 1217.15 Marketing.

Marketing means the sale or other disposition of softwood lumber in interstate, foreign, or intrastate commerce.

§ 1217.16 Nominal size.

Nominal size means the size by which softwood lumber is known and sold in the marketplace that differs from actual size and is based on the thickness and width of a board when it is first cut from a log, or rough cut, prior to drying and planing.

§ 1217.17 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic

promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1217.18 Part and subpart.

Part means the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1217.19 Person.

Person means any individual, group of individuals, partnership, company, corporation, association, affiliate, cooperative, or any other legal entity.

§ 1217.20 Planing.

Planing means the act of smoothing the surface of a board to make the wood a uniform size.

§ 1217.21 Programs, plans, and projects.

Programs, plans and projects mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1217.22 Promotion.

Promotion means any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of softwood lumber to the public and to any and all consumers and those who influence consumption of softwood lumber with the intent of improving the perception, markets and competitive position of softwood lumber and stimulating sales of softwood lumber.

§ 1217.23 Research.

Research means any activity that advances the position of softwood lumber in the marketplace that includes any type of test, study, or analysis designed to advance the image, desirability, use, marketability, sales, product development, or quality of softwood lumber; new applications; improving softwood lumber's position in building and fire codes; softwood lumber product testing and safety; and evaluating the effectiveness of market development and promotion efforts including life cycle studies, forestry, sustainable forest management, environmental preferrability, competitiveness, efficiency, pest and disease control, water quality and other management aspects of forestry and the forests from which softwood lumber originates.

§ 1217.24 Secretary.

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

§ 1217.25 Softwood.

Softwood means one of the botanical groups of trees that have needle-like or scale-like leaves, or conifers.

§ 1217.26 Softwood lumber.

Softwood lumber means and includes softwood lumber and products manufactured from softwood as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g), and as assessed under § 1217.52.

§ 1217.27 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.28 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C. to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1217.29 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C. to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1217.30 United States.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

SOFTWOOD LUMBER BOARD

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of the Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1)(i) and (ii) and (b)(2) and (3) of this section. For purposes of this section, ''large'' means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and ''small'' means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's term of office, that member may serve for the remainder of the term.

(b) *Composition of the Board.* The 2020 Board shall be composed of 16 members. The 2021 Board and each subsequent Board shall be composed of 14 members. The Board shall be established as follows:

(1) *Domestic manufacturers.* Domestic manufacturers must reside in the United States. For the 2020 Board, 11 members shall represent domestic manufacturers and for the 2021 Board and each subsequent Board, ten members shall represent domestic manufacturers who reside in the following three regions:

(i) Five members shall represent manufacturers of softwood lumber in the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. For the 2020 Board, of these five members, two must represent large and three must represent small domestic manufacturers. For the 2021 Board and each subsequent Board of these five members, two must represent large, two must represent small, and one may represent domestic manufacturers of any size;

(ii) Five members shall represent manufacturers of softwood lumber in the U.S. West Region for the 2020 Board, and for the 2021 Board and each subsequent Board, four members shall manufacture softwood lumber in the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. For the 2020 Board, of these five members, four must represent large and one must represent small domestic manufacturers. For the 2021 Board and each subsequent Board, of the four members, two must represent large, one must represent small, and one may represent domestic manufacturers of any size; and

(iii) One member shall represent a manufacturer of softwood lumber in the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraph (b)(1)(i), (ii), or (iii) of this section. This member may represent domestic manufacturers of any size.

(iv) For the 2021 Board, four members may represent a manufacturer for the U.S. market of any size.

(2) *Importers for the 2020 Board.* Five members shall be importers from the following two regions:

(i) Three members must import softwood lumber from the Canadian

West Region, which consists of the provinces of British Columbia and Alberta. Of these three members, two must represent large and one must represent small importers; and

(ii) Two members must import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States. Of these two members, one must represent large and one must represent small importers.

(3) *Importers for the 2021 Board and each subsequent Board.* Four members shall represent importers. Of these four members, two must represent large, one must represent small, and one may represent importers of any size. At least three of these members must import softwood lumber from the following regions:

(i) Two members must import softwood lumber from the Canadian West Region, as defined in paragraph (b)(2)(i) of this section; and

(ii) One member must import softwood lumber from the Canadian East Region, as defined in paragraph (b)(2)(ii) of this section.

(c) *Periodic review.* In each five-year period, but not more frequently than once in each three-year period, the Board shall:

(1) Review, based on a three-year average, the geographical distribution of the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States; and

(2) Review, based on a three-year average, the distribution of the size of operations within each region; and

(3) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The distribution of volumes between regions and the distribution of the size of operations within regions shall also be considered. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

[84 FR 50299, Sept. 25, 2019]

[76 FR 46193, Aug. 2, 2011, as amended at 85 FR 45059, July 27, 2020]

§ 1217.41 Nominations and appointments.

Nominations shall be conducted as follows:

(a) The Board shall conduct outreach to all segments of the softwood lumber industry. Softwood lumber domestic manufacturers and importers may submit nominations to the Board. Nominees must domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year;

(b) Domestic manufacturers and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(c) Nominees may seek nomination to the Board for all open or vacant seats for which the nominees are eligible;

(d) The Board will evaluate all eligible nominees and submit the name of one nominee for each open seat and the name of one additional nominee for each open seat to the Secretary. Other qualified persons interested in serving in the open seats but not recommended by the Board will be designated by the Board as additional nominees for consideration by the Secretary;

(e) The Board must submit nominations to the Secretary at least six months before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board;

(f) No two members shall be employed by a single corporation, company, partnership, or any other legal entity. This includes subsidiaries and affiliates thereof; and

(g) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be

implemented through rulemaking by the Secretary.

[84 FR 50299, Sept. 25, 2019]

§ 1217.42 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be recommended to the Secretary by the Blue Ribbon Commission.

§ 1217.43 Removal and vacancies.

(a) In the event that any member of the Board ceases to work for or be affiliated with a domestic manufacturer or importer or ceases to do business in the region he or she represents, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a position becomes vacant, nominations to fill the vacancy may be conducted using the nominations process set forth in § 1217.41(b) or the Board may nominate eligible persons. A vacancy will not be required to be filled if the unexpired term is less than 6 months.

[76 FR 46193, Aug. 2, 2011, as amended at 78 FR 77334, Dec. 23, 2013]

§ 1217.44 Procedure.

(a) A majority of Board members (exclusive of vacant seats) will constitute a quorum so long as at least two of the members present are importer members and five of the members present are domestic manufacturers. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board, executive committee, and other committees will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members (exclusive of vacant seats), except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least a majority of Board members plus two (exclusive of vacant seats).

(d) The Board must give members and the Secretary timely notice of all Board, executive committee, and other committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified, and the members are provided the opportunity to vote;

(2) A majority of Board members (exclusive of vacant seats) vote in favor of the action (unless a vote of a majority of Board members plus two (exclusive of vacant seats) is required under the Order); and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

[84 FR 50300, Sept. 25, 2019]

§ 1217.45 Reimbursement and attendance.

Board members will serve without compensation. Board members will be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1217.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and, such other officers as may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary;

(h) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research, and information, including consumer and industry information, research and advertising designed to strengthen the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to §1217.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

(2) The contractor or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(i) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(j) To borrow funds necessary for startup expenses of the Order;

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(l) To recommend changes to the assessment rates as provided in this part;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and at such

other times as the Secretary may request, and to submit a report of each audit directly to the Secretary;

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To receive, investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

§ 1217.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all geographic origins shall be treated equally.

EXPENSES AND ASSESSMENTS

§ 1217.50 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, except for the initial budget;

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Order.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources (*i.e.*, Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) For fiscal years beginning two years after the date the of the first Board meeting, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 8 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That, the funds in the reserve do not exceed one fiscal period's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1217.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within 90 calendar days after the end of the fiscal year to which it applies.

§ 1217.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board.

(b) Subject to the exemptions specified in §1217.53, each manufacturer for the U.S. market shall pay an assessment to the Board at the rate of $0.41 per thousand board feet of softwood lumber, except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume of softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least a majority of Board members plus two (exclusive of vacant seats), a change in the assessment rate. In no event may the rate be less than $0.35 per thousand board feet nor more than $0.50 per thousand board feet. A change in the

assessment rate is subject to rulemaking by the Secretary.

(d) Domestic manufacturers shall remit to the Board the amount due no later than the 30th calendar day of the month following the end of the quarter in which the softwood lumber was shipped.

(e) Domestic product that cannot be categorized in the Harmomized Tariff Schedule of the United States (HTSUS) numbers listed in paragraph (h) of this section if it were an import is not covered under this Order.

(f) Softwood lumber originating in the United States that is exported to another country and shipped back to the United States is covered under this Order, provided that it can be categorized in the HTSUS numbers listed in paragraph (h) of this section.

(g) Each importer of softwood lumber shall pay through Customs to the Board an assessment on softwood lumber imported into the United States as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g), provided that it can be categorized in the HTSUS numbers listed in paragraph (h) of this section.

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: One cubic meter (m3) equals 0.423776001 thousand board feet, and one square meter (m2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (h)

Softwood lumber (by HTSUS number)	Assessment $/cubic meter	Assessment $/square meter
4407.11.00	0.1737	0.004412
4407.12.00	0.1737	0.004412
4407.19.05	0.1737	0.004412
4407.19.06	0.1737	0.004412
4407.19.10	0.1737	0.004412
4409.10.05	0.1737	0.004412
4409.10.10	0.1737	0.004412
4409.10.20	0.1737	0.004412
4409.10.90	0.1737	0.004412
4418.99.10	0.1737	0.004412

(i) In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the softwood lumber involved, assessments will continue to be collected based on the new number.

(j) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board no later than the 30th calendar day of the month following the end of the quarter in which the softwood lumber was imported.

(k) Articles brought into the United States temporarily and for which an exemption is claimed under subchapter XIII of chapter 98 of the HTSUS are not covered under this Order. If assessments are collected by Customs for these products, the importer may apply to the Board for a refund of assessments.

(l) When a domestic manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(m) The Board may accept advance payment of assessments from any manufacturer for the U.S. market that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(n) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

[76 FR 46193, Aug. 2, 2011, as amended at 84 FR 50300, Sept. 25, 2019; 86 FR 11390, Feb. 25, 2021]

§ 1217.53 Exemption from assessment.

(a) *Manufacturers for the U.S. market who domestically ship and/or import less than 15 million board feet annually.* (1) Domestic manufacturers who ship less

than 15 million board feet of softwood lumber within the United States in a fiscal year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and domestic manufacturers must reapply each year. Such manufacturers shall certify that they will ship less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past shipment data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible domestic manufacturer. It is the responsibility of the domestic manufacturer to retain a copy of the certificate of exemption.

(2) Importers who import into the United States less than 15 million board feet of softwood lumber in a fiscal year are exempt from paying assessments. Such importers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and importers must reapply each year. Such importers shall certify that they will import less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption is granted. The Board may request past import data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible importer. It is the responsibility of the importer to retain a copy of the certificate of exemption. The importer may be requested to submit a copy of the certificate to Customs. If Customs collects the assessment, the Board shall refund such importers their assessments no later than 60 calendar days after receipt of such assessments by the Board. No interest shall be paid on the assessments collected by Customs.

(3) Domestic manufacturers who did not apply to the Board for an exemption and shipped less than 15 million board feet of softwood lumber within the United States during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the domestic manufacturer accordingly.

(4) Importers who did not apply to the Board for an exemption and imported less than 15 million board feet of softwood lumber during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year.

(5) If an entity is both a domestic manufacturer and an importer, the sum of such entity's domestic shipments and imports during a fiscal year shall count towards the 15 million board feet exemption.

(6) Domestic manufacturers and importers who received an exemption certificate from the Board but domestically shipped or imported 15 million board feet or more of softwood lumber during the fiscal year shall pay the Board the applicable assessments owed on the domestic shipments or imports over the 15 million board foot-exemption threshold within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board pursuant to § 1217.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Manufacturers for the U.S. market who domestically ship and/or import 15 million board feet or more annually.* (1) Domestic manufacturers who domestically ship 15 million board feet or more per fiscal year shall not pay assessments on their first 15 million board feet of softwood lumber shipped during the applicable fiscal year.

(2) Importers who import 15 million board feet or more per fiscal year shall be exempt from paying assessments on their first 15 million board feet of softwood lumber imported during the applicable fiscal year. Such importers

shall receive a refund from the Board for the applicable assessments collected by Customs. The Board shall refund such importers their assessments no later than 60 calendar days after receipt by the Board.

(c) *Export.* Shipments of softwood lumber by domestic manufacturers to locations outside of the United States are exempt from assessment. The Board shall establish procedures for approval by the Secretary for refunding assessments that may be paid on such shipments and establish any necessary safeguards as deemed appropriate. Safeguard procedures shall be implemented by the Secretary through rulemaking. The Board may also recommend to the Secretary that such shipments be assessed if it deems appropriate. Such action shall be implemented by the Secretary through rulemaking.

(d) *Organic.* (1) A domestic manufacturer of softwood lumber products who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, for as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports softwood lumber that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' softwood lumber on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer

continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (d)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

[76 FR 46193, Aug. 2, 2011, as amended at 80 FR 82029, Dec. 31, 2015]

PROMOTION, RESEARCH, AND INFORMATION

§ 1217.60 Programs, plans, and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans and projects authorized by this subpart. Such programs, plans and projects shall provide for promotion, research, education and other activities including consumer and industry information and advertising designed to:

(1) Maintain, develop, expand and grow markets for softwood lumber;

(2) Enhance and strengthen the image, reputation and public acceptance of softwood lumber and the forests from which it comes;

(3) Develop new markets and marketing strategies for softwood lumber;

(4) Expand the knowledge and understanding of the strength, safety and technical applications and encourage innovation in the use of softwood lumber;

(5) Transfer and disseminate the knowledge and understanding of the strength, safety, environmental and sustainable benefits and technical applications of softwood lumber; and

(6) Develop, expand and grow existing and new opportunities and applications for softwood lumber.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each program, plan and project authorized under this subpart to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board finds that a program, plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such plan or program.

§ 1217.61 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1217.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks,

inventions, publications, or product formulations, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1217.83 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§1217.70 Reports.

(a) Each manufacturer for the U.S. market will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) For domestic manufacturers:

(i) The name, address and telephone number of the domestic manufacturer;

(ii) The board feet of softwood lumber shipped within the United States;

(iii) The board feet of softwood lumber for which assessments were paid; and

(iv) The board feet of softwood lumber that was exported.

(2) For importers:

(i) The name, address and telephone number of the importer;

(ii) The board feet of softwood lumber imported;

(iii) The board feet of softwood lumber for which assessments were paid; and

(iv) The country of export.

(b) For domestic manufacturers, such information shall accompany the collected payment of assessments on a quarterly basis specified in §1217.52. For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after the end of the quarter in which the softwood lumber was imported.

[76 FR 46193, Aug. 2, 2011, as amended at 78 FR 77334, Dec. 23, 2013]

§1217.71 Books and records.

Each manufacturer for the U.S. market, including those exempt under §1217.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Domestic manufacturers who only export softwood lumber shall also retain such books and records. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A manufacturer for the U.S. market must maintain the books and records for two years beyond the fiscal period to which they apply.

§1217.72 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or other manufacturers for the U.S. market. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

MISCELLANEOUS

§ 1217.80 Right of the Secretary.

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

§ 1217.81 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber. A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether manufacturers for the U.S. market favor the continuation, suspension, or termination of the Order;

(2) No later than seven years after the Order becomes effective and every seven years thereafter, to determine whether softwood lumber manufacturers for the U.S. market favor the continuation of the Order. The Order shall continue if it is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

[76 FR 22755, Apr. 22, 2011, as amended at 81 FR 59427, Aug. 30, 2016; 84 FR 50300, Sept. 25, 2019]

§ 1217.82 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1217.83 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to nine of its members, representing all regions specified in § 1217.40(b), three of whom shall be importers and six of whom shall be domestic manufacturers, to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including

claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more softwood lumber industry organizations in the United States whose mission is generic softwood lumber promotion, research, and information programs.

§ 1217.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1217.85 Personal liability.

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

§ 1217.86 Separability.

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

§ 1217.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Secretary.

§ 1217.88 OMB Control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 (Board nominee background statement) and OMB control number 0581–0093.

[84 FR 50300, Sept. 25, 2019]

Subpart B—Referendum Procedures

§ 1217.100 General.

Referenda to determine whether eligible domestic manufacturers and importers favor the issuance, continuance, amendment, suspension, or termination of the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1217.101 Definitions.

For the purposes of this subpart:

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

(b) *Customs or CPB* means Customs and Border Protection, an agency of the United States Department of Homeland Security.

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

(d) *Eligible domestic manufacturer* means any person who manufactured and shipped 15 million board feet or more of softwood lumber in the United States during the representative period.

(e) *Eligible importer* means any person who imported 15 million board feet or more of softwood lumber into the United States during the representative period as a principal or as an agent, broker, or consignee of any person who manufactured softwood lumber outside of the United States for sale in the United States, and who is listed as the importer of record for such softwood lumber. Importation occurs when softwood lumber manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured softwood lumber immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of softwood lumber from Customs when such softwood lumber is entered or withdrawn for use in the United States.

(f) *Manufacture* means the process of transforming softwood logs into softwood lumber.

(g) *Order* means the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a softwood lumber manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the domestic manufacturing or importation of softwood lumber and the authority to transfer title to the softwood lumber so manufactured or imported.

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

(j) *Representative period* means the period designated by the Department.

(k) *Softwood* means one of the botanical groups of trees that have needle-like or scale-like leaves, the conifers.

(l) *Softwood lumber* means and includes softwood lumber and products manufactured from softwood as described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or SLA of 2008) of the Tariff Act of 1930 (19 U.S.C. 1202–1677g), as amended by section 3301 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008) and categorized in the following Harmonized Tariff Schedule of the United States (HTSUS) numbers—4407.11.00, 4407.12.00, 4407.19.05, 4407.19.06, 4407.19.10, 4409.10.05, 4409.10.10, 4409.10.20, 4409.10.90, and 4418.99.10. Domestic product that cannot be categorized in the referenced HTSUS numbers if it were an import is not covered under the Order. Further, softwood lumber originating in the United States that is exported to another country and shipped back to the United States is also covered under the Order, provided it can be categorized in the referenced HTSUS numbers. Additionally, articles brought into the United States temporarily and for which an

exemption is claimed under subchapter XIII of chapter 98 of the HTSUS are exempted from the SLA of 2008 and are not covered under the Order.

(m) *United States* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

[76 FR 46193, Aug. 2, 2011, as amended at 84 FR 50300, Sept. 25, 2019]

§ 1217.102 Voting.

(a) Each eligible domestic manufacturer and importer of softwood lumber shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture softwood lumber, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic manufacturer or importer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1217.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible domestic manufacturers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1217.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1217.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a

ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1217.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1217.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1217.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 4 U.S.C. is OMB control number 0581–0093.

[84 FR 50300, Sept. 25, 2019]

Subpart C—Rules and Regulations

SOURCE: 79 FR 64299, October 29, 2014, unless otherwise noted.

§ 1217.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any domestic manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the day assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Blueberry Promotion, Research, and Information Order

DEFINITIONS

Sec.
1218.1 Act.
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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 65 FR 7654, Feb. 15, 2000, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1218 appear at 66 FR 37118, 37119, July 17, 2001, and 71 FR 77245, Dec. 26, 2006.

Subpart A—Blueberry Promotion, Research, and Information Order

SOURCE: 65 FR 43963, July 17, 2000, unless otherwise noted.

DEFINITIONS

§ 1218.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1218.2 Blueberries.

Blueberries means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

§ 1218.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the U.S. Highbush Blueberry Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37118, July 17, 2001; 71 FR 44554, Aug. 7, 2006]

§ 1218.4 Crop year.

Crop year means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

§ 1218.5 Department.

Department means the U.S. Department of Agriculture.

§ 1218.6 Exporter.

Exporter means a person involved in exporting blueberries from another country to the United States.

§ 1218.7 First handler.

First handler means any person, (excluding a common or contract carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, blueberries. The term first handler includes a producer who handles or markets blueberries of the producer's own production.

§ 1218.8 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

§ 1218.9 Importer.

Importer means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

§ 1218.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

§ 1218.11 Market or marketing.

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

§ 1218.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1218.13 Part and subpart.

The Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order comprise this part. The Order is this subpart.

[86 FR 72782, Dec.23, 2021]

§ 1218.14 Person.

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

§ 1218.15 Processed blueberries.

Processed blueberries means blueberries which have been frozen, dried, pureed, or made into juice.

§ 1218.16 Producer.

Producer means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

§ 1218.17 Promotion.

Promotion means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. This includes paid advertising and public relations.

§ 1218.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

§ 1218.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been

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

§ 1218.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1218.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1218.22 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.23 U.S. Highbush Blueberry Council.

U.S. Highbush Blueberry Council or the *Council* means the administrative body established pursuant to § 1218.40.

[71 FR 44554, Aug. 7, 2006]

U.S. HIGHBUSH BLUEBERRY COUNCIL

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, shall be comprised of no more than 20 members and alternates for the 2022 Council, and comprised of no more than 21 members and alternates for the 2023 Council and each subsequent Council, appointed by the Secretary from nominations as follows:

(1) The 2022 Council shall be comprised of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(vi) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

(2) The 2023 and subsequent Council shall be composed of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Four exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the four largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

(b) *Adjustment of membership.* At least once every five years, the Council will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that the membership on the Council be altered to reflect any changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

(c) *Council's ability to serve the diversity of the industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Council take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 71 FR 44554, Aug. 7, 2006; 75 FR 31282, June 3, 2010; 80 FR 53262, Sept. 3, 2015; 86 FR 72782, Dec. 23, 2021]

§ 1218.41 Nominations and appointments.

(a) *State representatives.* (1) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be recommended to the Secretary for each member and each alternate position. Other eligible persons interested in serving in the respective state positions but not nominated by their State marketing order or commission will be designated by the State organization and/or Council as additional nominees for consideration by the Secretary.

(2) Nomination and election of state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state for a vote. The final nominee

for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(b) *Regional representatives.* Nomination and election of regional representatives will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated by the Council as additional nominees for consideration by the Secretary.

(c) *Importer, exporter, and public members.* Nominations for the importer, exporter, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) *Producers and importers.* Producer and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

80 FR 53262, Sept. 3, 2015, as amended at 86 FR 72783, Dec. 23, 2021]

§ 1218.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, the state representatives, first handler member, and their respective alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1. Council members and alternates shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed.

[86 FR 72783, Dec. 23, 2021]

§ 1218.43 Vacancies.

(a) In the event that any member of the Council ceases to be a member of the category of members from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.44 Alternate members.

An alternate member of the Council, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the Council and the alternate are unable to attend a meeting, the Council may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.45 Procedure.

(a) At a Council meeting, it will be considered a quorum when a minimum of 11 members, or their alternates serving in their absence, are present.

(b) At the start of each fiscal period, the Council will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Council members and alternates will receive a minimum of 10 days advance notice of all Council and committee meetings.

(d) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Council members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary. Committees may also consist of individuals other than Council members and such individuals may vote in committee meetings. These committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council.

(f) All votes at meetings of the Council and committees may be cast in person or by electronic voting or other means as the Council and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes.

(g) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(h) There shall be no voting by proxy.

(i) The chairperson shall be a voting member.

(j) The organization of the Council and the procedures for the conducting of meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 75 FR 31282, June 3, 2010; 80 FR 53262, Sept. 3, 2015]

§ 1218.46 Compensation and reimbursement.

The members of the Council, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.47 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Council, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Council a chairperson, other officers, committees, and subcommittees, as the Council determines to be appropriate;

(d) To employ persons, other than the members, as the Council considers necessary to assist the Council in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Council shall develop and submit to the Council a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Council of activities conducted under the contract or agreement; and make such other reports available as the Council or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Council;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;

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

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Council considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.48 Prohibited activities.

The Council may not engage in, and shall prohibit the employees and agents of the Council from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

EXPENSES AND ASSESSMENTS

§ 1218.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least on preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.

(g) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(i) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary

on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1218.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of $18 per ton (or $0.01984 per kg) on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary.

(d) Each importer of fresh and processed blueberries shall pay an assessment to the Council on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0029 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the Council with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the Council. All final payments for a crop year are to be received no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the Council, the total amount for which any such handler is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The Council may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 78 FR 59779, Sept. 30, 2013]

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually shall be exempt from the payment of assessments. Such producer may apply to the Council—on a form provided by the Council—for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed.

(b) Any importer who imports less than 2,000 pounds of fresh and frozen blueberries annually shall be exempt from the payment of assessments. Such importer may apply to the Council—on a form provided by the Council—for a

certificate of exemption. Such importer shall certify that the importer's importation of fresh and frozen blueberries shall not exceed 2,000 pounds for the fiscal year for which the exemption is claimed.

(c) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(d) To apply for exemption under this section, a producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(e) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Council, with the approval of the Secretary.

(f) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' blueberries on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (e) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs and Border Protection (Customs) collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid

the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council.

(j) Importers who are exempt from payment of assessments shall be eligible for reimbursement of assessments collected by Customs and may apply to the Council for a reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted to the Council within 90 days of the last day of the year the blueberries were actually imported.

(k) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(l) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 70 FR 2758, Jan. 14, 2005; 80 FR 82030, Dec. 31, 2015]

§ 1218.54 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.55 Independent evaluation.

The Council shall, not less often than every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and other programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of

each periodic independent evaluation conducted under this paragraph.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Council under this subpart shall be the property of the U.S. Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Council; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1218.73 shall apply to determine disposition of all such property.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

REPORTS, BOOKS, AND RECORDS

§ 1218.60 Reports.

(a) Each first handler subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the Council 30 days after the end of the crop year.

(b) Each producer and importer subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds produced;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the producer;

(4) Date collection was made on each pound produced. All reports are due to the Council 30 days after the end of the crop year.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1218.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the

number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

MISCELLANEOUS

§ 1218.70 Right of the Secretary.

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1218.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1218.73 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Council under any contracts or agreements entered into pursuant to the Order;

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

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

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1218.75 Personal liability.

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.76 Separability.

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

§ 1218.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–001.

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

§ 1218.100 General.

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

§ 1218.101 Definitions.

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

(b) *Blueberries* means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

(c) *Eligible importer* means any person who imported 2,000 pounds or more of fresh or processed blueberries, that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced blueberries immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of blueberries from the U.S. Customs Service when such blueberries are entered or withdrawn for consumption in the United States.

(d) *Eligible producer* means any person who produced 2,000 pounds or more of blueberries in the United States during the representative period who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents blueberry production facilities and equipment resulting in the ownership of all or a portion of the blueberries produced;

(3) Owns blueberry production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the blueberries produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries who share the risk of loss and receive a share of the blueberries produced. No other acquisition of legal title to blueberries shall be deemed to result in persons becoming eligible producers.

(e) *Order* means the Blueberry Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a blueberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

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

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1218.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

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

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1218.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1218.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1218.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Subpart C—Provisions for Implementing the Blueberry Promotion, Research and Information Order

SOURCE: 80 FR 53262, Sept. 3, 2015, unless otherwise noted.

§ 1218.520 Late payment and interest charges for past due assessments.

(a) A late payment charge will be imposed on any handler who fails to make timely remittance to the Council of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 5 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Council.

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Hass Avocado Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

SOURCE: 67 FR 7264, Feb. 19, 2002, unless otherwise noted.

Subpart A—Hass Avocado Promotion, Research, and Information Order

SOURCE: 67 FR 56897, Sept. 6, 2002, unless otherwise noted.

DEFINITIONS

§ 1219.1 Act.

Act means the Hass Avocado Promotion, Research, and Information Act of 2000, Public Law 106–387, 7 U.S.C. 7801–7813, and any amendments thereto.

§ 1219.2 Association.

Association means an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States.

§ 1219.3 Conflict of interest.

Conflict of interest means a situation in which a Board member or employee has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1219.4 Consumer information.

Consumer information means any action or program that disseminates or otherwise provides information to consumers and other persons, on the use, nutritional attributes, and other information that will assist consumers and other persons in the United States in making evaluations and decisions regarding the purchase, preparation, and use of Hass avocados.

§ 1219.5 Crop year.

Crop year means the period from November 1 of one year through October 31 of the following year, or such other one-year period recommended by the Board and approved by the Secretary.

§ 1219.6 Customs.

Customs means the United States Customs Service.

§ 1219.7 Department.

Department means the United States Department of Agriculture.

§ 1219.8 Exempt handler.

Exempt handler means a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. A person who handles both Hass avocados that have already been subject to assessments under the Order and Hass avocados that have not been subject to assessments under the Order is a first handler.

§ 1219.9 First handler.

First handler means a person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados for consumption in the United States and who is responsible for remitting assessments to the Board. For the purposes of the Order, the term means the first person who handles Hass avocados for sale (except a common or contract carrier of Hass avocados owned by another person), including a producer who handles Hass avocados for sale of the producer's own production.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or *marketing year* means the period beginning on November 1 of any year and extending through the last day of October of the following year, or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1219.11 Handle.

Handle means to pack, process, transport, purchase, or in any other way to place or cause Hass avocados to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or

delivery of Hass avocados by the producer thereof to a handler.

§ 1219.12 Hass avocado.

Hass avocado means the fruit grown in or imported into the United States of the species *Persea americana* Mill., or other type of avocados that, in the determination of the Board, with approval of the Secretary, is so similar to the Hass variety avocado as to be indistinguishable to consumers in fresh form. The term shall include all fruit in fresh, frozen, or any other processed form.

§ 1219.13 Hass Avocado Board.

Hass Avocado Board or *the Board* means the administrative body established pursuant to § 1219.40.

§ 1219.14 Importer.

Importer means any person who imports Hass avocados into the United States. The term includes a person who holds title to Hass avocados produced outside of the United States immediately upon release by Customs, as well as any person who acts on behalf of others, as an agent, broker, or consignee, to secure the release of Hass avocados from Customs and the introduction of the released Hass avocados into the current of commerce and who is listed in the import records of Customs as the importer of record for such Hass avocados.

§ 1219.15 Industry information.

Industry information means information, programs, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and enhance the image of Hass avocados and the Hass avocado industry in the United States.

§ 1219.16 Marketing.

Marketing means any activity related to the sale or other disposition of Hass avocados in any channel of commerce.

§ 1219.17 Order.

Order means this subpart.

§ 1219.18 Part and subpart.

Part means the Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order itself shall be a *subpart* of such part.

§ 1219.19 Person.

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

§ 1219.20 Producer.

Producer means any person who is engaged in the business of producing Hass avocados in the United States for commercial use, who owns, or shares the ownership and risk of loss, of such Hass avocados.

§ 1219.21 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information programs, plans, studies, or projects established pursuant to § 1219.50.

§ 1219.22 Promotion.

Promotion means any action to advance the image, desirability, or marketability of Hass avocados in the United States, including paid advertising, sales promotion, and publicity. Promotion activities are designed to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

§ 1219.23 Research.

Research means any type of test, study, or analysis relating to market research, market development, and market efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the knowledge, image, desirability, usage, or marketability of Hass avocados in the United States.

§ 1219.24 Secretary.

Secretary means the Secretary of Agriculture of the United States or any

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

§ 1219.25 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 1219.26 United States.

United States means collectively the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

THE HASS AVOCADO BOARD

§ 1219.30 Establishment and membership.

(a) A Hass Avocado Board, called the Board elsewhere in this part, is hereby established to administer the terms and provisions of this subpart. The Board shall consist of 12 members nominated by the Hass avocado industry and appointed by the Secretary as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Board are nominated and appointed. Board members and alternates shall be domiciled in the United States.

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

(1) Seven members and their alternates shall be producers of Hass avocados that are subject to assessments under this subpart;

(2) Two members and their alternates shall be importers of Hass avocados that are subject to assessments under this subpart; and

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determination of the average volume of domestic production and the average volume of imports into the United States market over the previous three years, based on all information available to the Secretary.

(c) Three years after the assessment of funds commences pursuant to this subpart, and at the end of each three-year period thereafter, the Board shall review the production of domestic Hass avocados in the United States and the volume of imported Hass avocados on the basis of the amount of assessments collected from producers and importers over the immediately preceding three-year period and, if warranted, recommend to the Secretary the reapportionment of the positions authorized in paragraph (b)(3) of this section to reflect changes in the proportion of domestic Hass avocado production to the volume of imported Hass avocados, to the extent possible in the Act. Any adjustment under this paragraph shall be subject to the review and approval of the Secretary.

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States (either directly or as an agent, broker, or consignee of any person that produces Hass avocados outside of the United States for sale in the United States), who is subject to assessments under the Order, and who is listed by Customs as the importer of record for such Hass avocados. A substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados.

§ 1219.31 Initial nomination and appointment of producer members and alternates.

(a) The Association will nominate producer members and alternates to serve on the Board in accordance with the following procedures.

(1) The Association shall establish a list of producers in the United States who are eligible to serve on the Board and notify all producers that they may nominate persons to serve as members and alternates on the Board.

(2) After names are received from the producers, the Association shall prepare a ballot with the names of all persons nominated and mail it to all producers to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Association shall announce the results and submit two names for each producer member and two names for each alternate producer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the producer members and alternates of the Board from the names submitted by the Association. Following the selection of the producer members, the Secretary shall select the alternate producer members. In selecting the alternate members, the Secretary shall consider the names submitted by the Association for each alternate member position along with the individuals whose names were submitted by the Association for each Board member position but were not selected for that position.

§ 1219.32 Initial nomination and appointment of importer members and alternates.

(a) The Department will conduct the nomination process for the initial importer members and alternates on the Board in accordance with the following procedures.

(1) The Department shall notify all known importers and importer organizations that they may nominate persons to serve as importer members and alternates on the Board.

(2) After names are received from the importers and importer organizations, the Department shall prepare a ballot with the names of all persons nominated and mail it to all known importers to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Department shall announce the results and submit two names for each importer member and two names for each alternate importer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the importer members and alternates of the Board from the nominees elected by importers. Following the selection of the importer members, the Secretary shall select the alternate importer members. In selecting the alternate members, the Secretary shall consider the names for each alternate member position along with the individuals who were elected by importers for each Board member position but were not selected for that position.

§ 1219.33 Subsequent nomination and appointment of Board members and alternates.

The Board's staff shall announce at least 150 days in advance of the expiration of members' and alternates' terms that such terms are expiring and shall solicit nominations in accordance with procedures recommended by the Board and approved by the Secretary. Nominations for such positions should be submitted to the Secretary no less than 90 days prior to the expiration of the terms.

§ 1219.34 Failure to nominate.

In any case in which producers or importers fail to nominate individuals for appointment to the Board, the Secretary may appoint individuals to fill vacancies from the appropriate segments of the industry.

§ 1219.35 Term of office.

The members and alternate members of the Board shall serve for terms of three years, except the members of the initial Board shall serve terms as follows: Four members and four alternates shall serve for two-year terms; four members and four alternates shall serve for three-year terms; and four members and four alternates shall

serve for four-year terms. No member shall serve more than two consecutive three-year terms. Members and alternates serving initial two-year or four-year terms may serve for one additional three-year term. A Board member may serve as an alternate during the years the member is ineligible for a member position. Each term of office will end on October 31, with new terms of office beginning on November 1.

§ 1219.36 Vacancies.

(a) In the event any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such member or alternate shall be disqualified from serving on the Board and the position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Board shows adequate cause, the member shall be removed from office.

(c) Should any Board member position become vacant in the event of the death, removal, resignation, or disqualification, the alternate of that member shall automatically assume the position of said member. The alternate shall serve until the end of the member's normal term. If there is no alternate member to assume the position of member, the successor member and alternate shall be nominated and selected in the manner specified in §§ 1219.31, 1219.32, or 1219.33.

(d) Should any alternate member become vacant in the event of death, removal, resignation, or disqualification, the Board may nominate persons to serve for the unexpired term of such alternate member. The nomination shall be conducted at a regularly scheduled Board meeting as soon as practicable after the vacancy occurs. The Board may solicit the names of nominees from producers and importers prior to the meeting and from the floor of the meeting. All nominees must meet the qualifications for nomination. The Board shall submit two nominees for each vacancy to the Secretary. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1219.37 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of the death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for the meeting.

§ 1219.38 Powers and duties.

The Board shall have the following powers and duties in addition to the responsibilities and authorities specified in other sections of this subpart:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, at the start of each fiscal period, and at such other times as the Board determines to be appropriate;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this subpart;

(e) To employ such persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(f) To appoint from its members an executive committee and to delegate to the committee authority to administer

the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board and approved by the Secretary;

(g) To develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval and to propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research;

(h) To develop and implement after the approval by the Secretary programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research, to contract or enter into agreements with appropriate persons to implement the programs, plans, and projects, and to pay the costs of the implementation of contracts and agreements with funds collected under this subpart.

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the Hass avocado industry's position in the domestic marketplace; to maintain and expand existing domestic markets and uses for Hass avocados; to create new domestic markets; and to carry out programs, plans, and projects designed to provide maximum benefits to the Hass avocado industry;

(k) To evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*];

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary amendments to this Order;

(n) To invest, pending disbursement under a program, plan, or project, funds collected through assessments authorized under this Act only in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may be used only for a purpose for which the invested funds may be used;

(o) To borrow funds necessary for the startup expenses of the Order;

(p) To cause the books of the Board to be audited by a qualified independent auditor at the end of each fiscal period and to submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings and teleconferences of the Board and its committees as is given to members in order that the Secretary's representative(s) may attend or participate in the meetings;

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

(s) To periodically prepare and make public reports of its activities carried out, and at least once each fiscal period, to make public an accounting of funds received and expended; and

(t) To notify Hass avocado producers, first handlers, and importers of all Board meetings through news releases or other means.

§ 1219.39 Board procedure.

(a) At a properly convened meeting of the Board, seven (7) members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* that such alternates shall serve only when the member is absent from a meeting. Any action of the Board shall require the concurring votes of a majority of those present

and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or other means of communication. Such alternative means for the Board taking action may be undertaken for various reasons. These reasons include the need to address matters of an emergency nature when there is not enough time to call an assembled meeting of the Board. All telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided an opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(c) All Board members and alternates and the Secretary will be notified at least 10 days in advance of all Board meetings, except the chairperson of the Board can waive the 10-day requirement in matters of an emergency nature.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) There shall be no voting by proxy.

(f) The chairperson shall be a voting member of the Board.

§ 1219.40 Committee procedure.

(a) The Board may establish committees as deemed necessary to carry out the purposes and objectives of the Order.

(b) The chairperson of the Board shall appoint all committee chairpersons and shall appoint all members of each committee after consultation with the committee chairperson affected. Appointments are subject to approval by the Board and may be changed from time to time as determined by the chairperson of the Board with the concurrence of the Board.

(c) The chairperson of the Board may appoint committee members from among the Board members and alternates and from the industry in general.

(d) The rules and procedures under which committees conduct their activities shall be prescribed in the Board's bylaws.

(e) Committee members and the Secretary will be notified at least 10 days in advance of all committee meetings.

(f) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present.

(g) There shall be no voting by proxy on committees.

(h) The chairperson of the Board shall be an ex-officio member of all committees.

§ 1219.41 Compensation and expenses.

(a) The members and alternates of the Board and committee members shall serve without compensation but shall be reimbursed for reasonable out-of-pocket expenses, as approved by the Board, incurred by them in the performance of their duties.

(b) The Board shall have in place sufficient internal controls to prevent reimbursements or expenditures for unreasonable or otherwise controversial travel and meeting expenses.

§ 1219.42 Prohibited activities.

The Board may not engage in and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest. For the purposes of this subpart, Board members and employees thereof must disclose any relationship with any organization or company that has a contract with the Board or operates a State promotion program. No member may vote on any matter in which the member or member's business entity has a financial interest.

(b) Using funds collected under this subpart for the purpose of influencing legislation or governmental action or policy, by local, national, and foreign governments, except to develop and make recommendations to the Secretary as provided for in this subpart.

(c) In a program, plan, or project conducted under this subpart:

(1) Making any reference to private brand names or making false, misleading, disparaging, or unwarranted claims on behalf of Hass avocados or

(2) Making any false, misleading, or disparaging statements with respect to the attributes or use of any agricultural product. This section shall not preclude the Board from offering its programs, plans, and projects for use by commercial parties under such terms and conditions as the Board may prescribe as approved by the Secretary.

(d) For the purposes of this section, a reference to State of origin or country of origin does not constitute a reference to a private brand name with regard to any funds credited to or disbursed by the Board to the Association or to any importer association established in accordance with §1219.54.

BUDGETS, EXPENSES, AND ASSESSMENTS

§1219.50 Budgets, programs, plans, and projects.

(a) The Board shall submit to the Secretary, on a fiscal period basis, annual budgets of its anticipated expenses and disbursements of the Board in the administration of this subpart, including the projected costs of Hass avocado promotion, industry information, consumer information, and related research programs, plans, and projects. The first budget shall cover such period as may remain before the beginning of the next fiscal period. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal period. Thereafter, the Board shall submit budgets for each succeeding fiscal period not less than 60 days before the beginning of such fiscal period.

(b) The Board shall receive and evaluate, or on its own initiative develop programs, plans and projects for Hass avocado promotion, industry information, consumer information as well as related research. The Board shall submit to the Secretary for approval any program, plan, or project authorized in this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, or projects for advertising, sales promotion, other promotion, and consumer information with respect to Hass avocados directed toward increasing the general demand for Hass avocados in the United States. Funds shall be available as necessary to carry out this section;

(2) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, and projects designed to strengthen the position of the Hass avocado industry in the domestic marketplace; to maintain, develop, and expand markets for Hass avocados in the United States; to lead to the development of new marketing strategies; to advance the image and desirability of, increase the efficiency of, and encourage further development of the Hass avocado industry; and to provide for the disbursement of necessary funds for the purposes described in this section;

(3) The establishment, implementation, issuance, effectuation, administration, and evaluation of programs, plans, and projects for marketing development research; research on the sale, distribution, marketing, use, quality, and nutritional value of Hass avocados; and other research with respect to Hass avocado marketing, promotion, industry information, or consumer information, including the creation of new products thereof. Information acquired from such plans and projects shall be disseminated as appropriate. Funds shall be available as necessary to carry out this section; and

(4) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements with funds collected pursuant to §1219.54.

(c) A budget, program, plan, or project for Hass avocados promotion, industry information, consumer information, or related research may not be implemented prior to approval of the budget, program, plan, or project by the Secretary. If the Secretary fails to provide notice to the Board or approval or disapproval of a budget, program, plan, or project within 45 days after receipt, such budget, program, plan, or project shall be deemed approved by

the Secretary and may be implemented by the Board.

(d) The Board, from time to time, may seek advice and consult with experts from the production, import, wholesale, and retail segments of the Hass avocado industry to assist in the development of promotion, industry information, consumer information, and related research programs, plans, and projects. For these purposes, the Board may appoint special committees composed of persons other than Board members. A committee so appointed shall consult directly with the Board.

(e) Programs must be conducted throughout the year to reflect the periods when imported and domestic Hass avocados are in the U.S. marketplace.

(f) The Board shall consult with both the Association and importer associations on programs, plans, and projects for generic promotions.

§ 1219.51 Contracts and agreements.

(a) The Board shall enter into a contract or an agreement with the Association for the implementation of programs, plans, or projects for promotion, industry information, consumer information, or related research with respect to Hass avocados and for the payment of the cost of the contract or agreement with funds received by the Board under this subpart. The Board may disburse such funds as necessary for these purposes after such programs, plans, or projects have been submitted to and approved by the Secretary.

(b) Any contract or agreement entered into shall provide that the contracting or agreeing party shall develop and submit to the Board a program, plan or project, together with a budget that includes the estimated costs to be incurred for the program, plan or project, and such program, plan or project shall become effective on the approval of the Secretary. For such contract or agreement, the contracting or agreeing party shall:

(1) Keep accurate records of all transactions of the party;

(2) Account for funds received and expended;

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

(4) Make such other reports as the Board or the Secretary shall require.

(c) The Secretary may audit the records of the contracting or agreeing party periodically.

(d) Contractors and subcontractors are subject to the provisions of § 1219.42.

(e) The Board may enter into contracts or agreements for administrative services, including contracts for employment, as may be required to conduct its business. To the extent appropriate to the contract involved, contracts or agreements entered into by the Board under the authority of this section shall conform to the provisions described in paragraph (b) of this section.

§ 1219.52 Control of administrative costs.

(a) As soon as practicable after September 9, 2002, and after consultation with the Secretary and other appropriate persons, the Board shall implement a system of cost controls based on normally accepted business practices to:

(1) Ensure that the costs incurred by the Board in administering this part in any fiscal period shall not exceed 10 percent of the projected level of assessments and other income received by the Board for generic promotion and research programs for that fiscal period; and

(2) Cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate programs, plans, and projects under this subpart.

(b) Reimbursements to the Secretary required under § 1219.53(b) are excluded from the limitation on spending.

(c) To the extent possible, the Board shall use the resources, staffs, and facilities of existing avocado organizations as provided in § 1219.54(a).

§ 1219.53 Budget and expenses.

(a) The Board is authorized to incur such expenses, including provision for a reasonable reserve for operating contingencies, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise

its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board, including assessments, contributions from any person not subject to assessments under this subpart, and other funds available to the Board.

(b) The Board shall reimburse the Department:

(1) For expenses not to exceed $25,000 incurred by the Secretary in connection with any referendum conducted under the Act;

(2) For administrative costs incurred by the Secretary for supervisory work of up to two employee years annually after the Order or amendment to the Order has been issued and made effective; and

(3) For costs incurred by the Secretary in implementation of the Order, for enforcement of the Act and the order, for subsequent referenda conducted under the Act, and in defending the Board in litigation arising out of action taken by the Board or otherwise in defense of the Order.

(c) The Board shall establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs authorized by the Act. The Board shall include its annual administrative expenses as a separate item in its annual report. The Board shall adhere to its fiduciary responsibilities and ensure that all monies are spent in accordance with the Act and the Order.

(d) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first period of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. The contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

§ 1219.54 Assessments.

(a) Except as provided in § 1219.55, the initial rate of assessment shall be 2.5 cents per pound on fresh Hass avocados produced and handled in the United States and on fresh Hass avocados imported into the United States. An equivalent rate shall be assessed on processed and frozen Hass avocados on which an assessment has not been paid. Such equivalent rate will be assessed on processed or frozen Hass avocados upon the recommendation of the Board with the approval of the Secretary. The rate of assessment may be increased or decreased as recommended by the Board and approved by the Secretary. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be announced by the Board at least 30 days prior to going into effect and shall not be subject to a vote in a referendum. The maximum assessment rate authorized is 5 cents per pound. No more than one assessment shall be made on any Hass avocados.

(b) *Domestic assessments.* The collection of assessments on domestic Hass avocados will be the responsibility of the first handler.

(1) In the case of a producer acting as the producer's own first handler, the producer will be required to collect and remit the assessments due to the Board.

(2) Each first handler shall collect from the producer and pay to the Board an assessment of 2.5 cents per pound in accordance with this subpart. Assessments shall be remitted by each first handler to the Board or its agent within 30 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place.

(3) The first handler shall maintain a separate record of the domestic Hass avocados of each producer whose domestic Hass avocados are handled, including the domestic Hass avocados owned by the handler and domestic Hass avocados that are exported.

(4) Assessment of other types of fresh avocados may be added at the recommendation of the Board with the approval of the Secretary.

(c) *Import assessments.* Each importer of fresh Hass avocados shall pay an assessment to the Board through Customs on fresh Hass avocados imported for marketing in the United States.

(1) The assessment rate for imported fresh Hass avocados shall be the same or equivalent to the rate for fresh Hass avocados produced and handled in the United States.

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

(3) The assessments due on imported Hass avocados shall be paid when they are released from custody by Customs and introduced into the stream of commerce in the United States.

(d) All assessment payments and reports will be submitted to the Board's office. All final payments for a crop year are to be received no later than November 30 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with approval of the Secretary.

(e) A late payment charge prescribed by the Secretary shall be imposed on any first handler who fails to remit to the Board the total amount for which any such handler is liable on or before the due date. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed by the Secretary. The timeliness of a payment to the Board shall be based on the date the payment is actually received by the Board.

(f) Regulations issued by the Secretary may provide for different first handler payment schedules of assessments on domestic Hass avocados, so as to recognize differences in marketing or purchasing practices and procedures.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with approval of the Secretary.

(i) The collection of assessments shall commence on or after a date established by the Secretary and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments in an interest-bearing account until the Board is constituted and the funds are transferred to the Board.

(j) To facilitate the payment of assessments under this section, the Board shall publish lists of first handlers required to remit assessments under this subpart and exempt handlers.

(k) The Association shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados produced in such State. Such funds shall be remitted to such State organization no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the Association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the Association.

(l) An association of Hass avocado importers established pursuant to §1219.58 shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados imported by its members. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the importer association to finance promotion, research, consumer information, and industry information programs, plans,

and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the importer association.

(m) In general, assessment funds received by the Board shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act, as set forth in §1219.53(b).

(n) The Board may establish an operating monetary reserve which may carry over to subsequent fiscal periods: *Provided that*, the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, reserve funds may be used to defray any expenses authorized under this part.

§ 1219.55 Exemption from assessment.

(a) Any sale of Hass avocados for export from the United States is exempt from assessment.

(b) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Hass avocados.

§ 1219.56 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a person's reports, records, books, or accounts or by some other means that additional money is due to the Board, the person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against any amounts due in succeeding months unless the person requests a refund of the overpayment.

§ 1219.57 Patents, copyrights, trademarks, publications, and product formulations.

(a) Any patents, copyrights, trademarks, inventions, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval of the Secretary. Section 1219.72 describes the procedures for termination.

(b) Should patents, copyrights, trademarks, inventions, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, trademark, invention, publication, or product formulation in a manner consistent with paragraph (a) of this section.

§ 1219.58 Importer associations.

(a) An association of avocado importers is eligible to receive assessment funds and any proceeds from the investment of such funds only if such importer association is:

(1) Established pursuant to State law that requires detailed State regulation comparable to that applicable to the State organization of domestic avocado producers, as determined by the Secretary; or

(2) Certified by the Secretary as meeting the requirements applicable to the Board as to its operations and obligations, including budgets, programs, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary.

(b) An importer association may represent any importers of Hass avocados

including importers of Hass avocados from a particular foreign country. An importer association may be composed of importers as well as representatives of foreign avocado exporting industries. An importer association should establish it own bylaws and may use existing organizations for the establishment of the association and coordination of the association's promotion and research efforts.

(c) For the purposes of the Order, the information required for certification of the importer associations by the Secretary may include, but is not limited to, the following:

(1) Evidence of incorporation under any state law with all appropriate legal requirements;

(2) Evidence that the association is composed of importers that are located in any state and subject to assessments under the Order, no matter where the association has been incorporated or in which state the importers reside;

(3) Certification of the association's ability and willingness to further the aims and objectives of the Order;

(4) Evidence of stability and permanency; and

(5) A description of the functions of the association.

BOOKS, RECORDS, AND REPORTS

§ 1219.60 Reports.

(a) Each first handler of domestic Hass avocados, producer, and importer subject to this subpart shall report to the administrative staff of the Board, at such times and in such manner as the Board may prescribe, such information as may be necessary for the Board to perform its duties.

(b) First handler reports shall include, but shall not be limited to, the following:

(1) Number of pounds of domestic Hass avocados received during the reporting period;

(2) Number of pounds on which assessments were collected;

(3) Assessments collected during the reporting period;

(4) Name and address of person(s) from whom the first handler collected the assessments on each pound handled;

(5) Date collection was made on each pound handled;

(6) Record of assessments paid, including a statement from the handler that assessments have been paid on all domestic Hass avocados handled during the reporting period; and

(7) Number of pounds exported.

(c) Each importer subject to this subpart may be required to report the following:

(1) Number of pounds of Hass avocados imported during the reporting period;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound imported and to whom payment was made; and

(5) Record of each importation of Hass avocados during such period, giving quantity, variety, date, and port of entry.

§ 1219.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the employees and agents of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart, and the regulations issued thereunder, including such records as are necessary to verify any reports required. Books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1219.62 Books and records of the Board.

(a) The Board shall maintain such books and records as the Secretary may require. Such books and records shall be made available upon request by the Secretary for inspection and audit.

(b) The Board shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may require.

(c) The Board shall account for the receipt and disbursement of all the funds entrusted to the Board.

(d) The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal period. A report of each

audit shall be submitted to the Secretary.

§ 1219.63 Confidential treatment.

(a) All information obtained from the books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential and shall not be disclosed to the public by any person, including all current and former officers, employees, staff and agents of the Department, the Board, and contracting and subcontracting agencies or agreeing parties having access to such information. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected from such reports, if such statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) Any disclosure of any confidential information by any employee or agent of the Board shall be considered willful misconduct.

(c) No information on how a person voted in a referendum conducted under the Act shall be made public.

§ 1219.64 List of importers.

The administrative staff of the Board shall periodically review the list of importers of Hass avocados to determine whether persons on the list are subject to this subpart.

§ 1219.65 List of producers.

The administrative staff of the Board shall periodically review the list of producers of Hass avocados to determine whether the persons on the list of subject to this subpart. On the request of the Secretary or the Board, the Association shall provide to the Secretary or the administrative staff of the Board the list of producers of Hass avocados.

MISCELLANEOUS

§ 1219.70 Right of the Secretary.

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

§ 1219.71 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this part or subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Order or the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of Hass avocados.

(c) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Suspend or terminate, as appropriate, the collection of assessments not later than 180 days after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

§ 1219.72 Proceedings after termination.

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

(b) The said trustees shall:

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

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

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be distributed to authorized Hass avocado producer and importer organizations in the interest of continuing Hass avocado promotion, research, and information programs.

§ 1219.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any person, with respect to any such violation.

§ 1219.74 Personal liability.

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

§ 1219.75 Separability.

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

§ 1219.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary. Except for changes in the assessment rate, the provisions of the Act applicable to the Order are applicable to any amendment of the Order.

§ 1219.77 OMB control numbers.

The control numbers assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control numbers 0581–0197 and 0505–0001.

Subpart B—Referendum Procedures

§ 1219.100 General.

Referenda to determine whether eligible producers and importers of Hass avocados favor the issuance, amendment, suspension, or termination of the Hass Avocado Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1219.101 Definitions.

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

(b) *Eligible importer* means any person who imported Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States for at least one year prior to the referendum. Importation occurs when Hass avocados originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Hass avocados immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Hass avocados from the U.S. Customs Service when such Hass avocados are entered or withdrawn for consumption in the United States.

(c) *Eligible producer* means any person who produced Hass avocados in the United States for at least one year prior to the referendum who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents Hass avocado production facilities and equipment resulting in the ownership of all or a portion of the Hass avocados produced;

(3) Owns Hass avocado production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Hass avocados produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados who share the risk of loss and receive a share of the Hass avocados produced. No other acquisition of legal title to Hass avocados shall be deemed to result in persons becoming eligible producers.

(d) *Hass avocados* means the fruit grown in or imported into the United States of the species *Persea americana* Mill. For the purposes of the initial referendum, the term shall include fresh fruit only.

(e) *Order* means the Hass Avocado Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Hass avocado farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

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

(h) *Representative period* means the period designated by the Administrator.

(i) *United States.* The term ''United States'' means collectively of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

[67 FR 7264, Feb. 19, 2002; 67 FR 13563, Mar. 25, 2002]

§ 1219.102 Registration.

An eligible producer or importer of Hass avocados, as defined in this subpart, at the time of the referendum and during a representative period, who chooses to vote in any referendum conducted under this subpart, shall register with the referendum agent prior to the voting period, after receiving notice from the referendum agent concerning the referendum under § 1219.104(b). Registration information shall be confidential under § 1219.108.

§ 1219.103 Voting.

(a) Each eligible producer and eligible importer who registers to vote in the referendum shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or fax, as instructed by the referendum agent.

§ 1219.104 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast (voting period).

(b) Notify producers and importers of the voting period for the referendum and the requirement to register to vote in the referendum at least 30 days in advance by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio.

(c) Develop the ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(d) Develop a list of producers and importers who register to vote.

(e) Mail to registered voters the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(g) Prepare a report on the referendum.

(h) Announce the results to the public.

§ 1219.105 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1219.106 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such

ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1219.107 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1219.108 Confidential information.

The list of registered voters, ballots, and all other information or reports that reveal, or tend to reveal, the identity or vote of voters in the referendum shall be strictly confidential and shall not be disclosed.

§ 1219.109 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0197.

Subpart C—Rules and Regulations

SOURCE: 70 FR 2758, Jan. 14, 2005, unless otherwise noted.

§ 1219.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Hass Avocado Promotion, Research, and Information Order of this part.

§ 1219.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1219.202 Exemption for organic Hass avocados.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible Hass avocado producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before November 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Hass avocados on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before November 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

[70 FR 2758, Jan. 14, 2005, as amended at 80 FR 82031, Dec. 31, 2015]

§ 1219.203 Reapportionment of membership.

Pursuant to § 1219.30(c), the positions authorized in § 1219.30(b)(3) are reapportioned as follows: 3 importer members and their alternates.

[71 FR 26823, May 9, 2006]

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Soybean Promotion and Research Order

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AUTHORITY: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

Subpart A—Soybean Promotion and Research Order

SOURCE: 56 FR 31049, July 9, 1991, unless otherwise noted.

DEFINITIONS

§ 1220.101 Act.

The term *Act* means the Soybean Promotion, Research, and Consumer Information Act, subtitle E of title

XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1220.102 Board.

The term *Board* means the United Soybean Board established under § 1220.201 of this subpart.

§ 1220.103 Commerce.

The term *commerce* means interstate, foreign, or intrastate commerce.

§ 1220.104 Committee.

The term *Committee* means the Soybean Program Coordinating Committee established under § 1220.213 of this subpart.

§ 1220.105 Consumer information.

The term *consumer information* means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

§ 1220.106 [Reserved]

§ 1220.107 Cooperator organization.

The term *Cooperator Organization* means the American Soybean Association, or any successor organization to the American Soybean Association, which conducts foreign market development activities on behalf of soybean producers.

§ 1220.108 Department.

Department means the United States Department of Agriculture.

§ 1220.109 Eligible organization.

The term *eligible organization* means any organization which has been certified by the Secretary pursuant to § 1220.203 of this subpart as being eligible to submit nominations for initial membership on the Board.

§ 1220.110 First purchaser.

The term *first purchaser* means—

(a) except as provided in paragraph (b) of this section, any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the soybeans are forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.111 Fiscal period.

The term *fiscal period* means the calendar year or such other annual period as the Board may determine with the approval of the Secretary.

§ 1220.112 Industry information.

The term *industry information* means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

§ 1220.113 Marketing.

The term *marketing* means the sale or other disposition of soybeans or soybean products in any channel of commerce.

§ 1220.114 National nonprofit producer-governed organization.

The term *national nonprofit producer-governed organization* means an organization that—

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6)); and

(b) Is governed by a Board of directors of agricultural producers representing soybean producers on a national basis;

§ 1220.115 Net market price.

The term *net market price* means—

(a) except as provided in paragraph (b) of this section, the sales price, or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary; or

(b) For soybeans pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, and where the soybeans are forfeited by the producer in lieu of loan

repayment, the principal amount of the loan.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.116 Part and subpart.

Part means the Soybean Promotion and Research Order and all rules and regulations issued pursuant to the Act and the Order, and the Order itself shall be a ''Subpart'' of such part.

§ 1220.117 Plans and projects.

Plans and Projects means promotion, research, consumer information, and industry information plans, studies, or projects pursuant to § 1220.230.

§ 1220.118 Person.

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

§ 1220.119 Producer.

The term *producer* means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

§ 1220.120 [Reserved]

§ 1220.121 Promotion.

The term *promotion* means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or other information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

§ 1220.122 Qualified State Soybean Board.

The term *Qualified State Soybean Board* means a State soybean promotion entity that is authorized by State law and elects to be the Qualified State Soybean Board for the State in which it operates pursuant to § 1220.228(a)(1). If no such entity exists in a State, the term *Qualified State Soybean Board* means a soybean producer-governed entity—

(a) That is organized and operating within a State;

(b) That receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs; and

(c) That meets the criteria, established by the Board and approved by the Secretary, relating to the qualifications of such entity to perform its duties under this part as determined by the Board, and is certified by the Board under § 1220.228(a)(2), with the approval of the Secretary.

§ 1220.123 Referendum.

The term *Referendum* means a referendum, other than referenda defined in § 1220.106 and § 1220.124, to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers voting.

§ 1220.124 [Reserved]

§ 1220.125 Research.

The term *research* means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

§ 1220.126 Secretary.

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

§ 1220.127 Soybean products.

The term *soybean products* means products produced in whole or in part from soybeans or soybean byproducts.

§ 1220.128 Soybeans.

The term *soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.129 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.130 Unit.

The term *unit* shall mean each State, or group of States, which is represented on the Board.

UNITED SOYBEAN BOARD

§ 1220.201 Membership of board.

(a) For the purpose of nominating and appointing producers to the Board, the United States shall be divided into 31 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

TABLE 1 TO PARAGRAPH (a)

State/unit	Number of members
South Dakota	4
Ohio	4
North Dakota	4
Nebraska	4
Missouri	4
Minnesota	4
Iowa	4
Indiana	4
Illinois	4
Wisconsin	3
Tennessee	3
Mississippi	3
Michigan	3
Kentucky	3
Kansas	3
Arkansas	3
Virginia	2
Pennsylvania	2
North Carolina	2
Maryland	2
Louisiana	2
Alabama	1
Texas	1
South Carolina	1
Oklahoma	1
New York	1
New Jersey	1
Georgia	1
Delaware	1
Unit:	
Eastern Region (Connecticut, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)	1

(b) The Board shall be composed of soybean producers appointed by the Secretary from nominations submitted pursuant to §1220.203. A soybean producer may only be nominated by the unit in which that soybean producer is a resident or producer.

(c) At the end of each three (3) year period, the Board shall review the geographic distribution of soybean production volume throughout the United States and may recommend to the Secretary a modification of paragraph (e) of this section, to best reflect the geographic distribution of soybean production volume in the United States. The Secretary may amend this subpart to make the changes recommended by the Board in levels of productions used to determine per unit representation. A unit may not, as a result of any modifications under this subsection, lose Board seats to which it is entitled at the time this subpart is initially issued unless its average annual production, as determined under paragraph (e)(6) of this section, declines below the levels required for representation, as specified in paragraphs (e) (1) through (5) of this section.

(d) At the end of each three (3) year period, the Secretary shall review the volume of production (minus the volume of production for which refunds have been paid) of each unit provided representation under paragraph (a) of this section, and shall adjust the boundaries of any unit and the number of Board members from each such unit to conform with the criteria set out in paragraphs (e) (1) through (5) of this section.

(e) The following formula will be used to determine the number of directors for each unit who shall serve on the Board:

(1)(i) Except as provided in paragraph (e)(1)(ii) of this section, each State will be considered as a separate unit.

(ii) States which do not have annual average soybean production equal to or greater than three million (3,000,000) bushels shall be grouped, to the extent practicable, into geographically contiguous units each of which, to the extent practicable, have a combined annual soybean production level which is equal to or greater than three million (3,000,000) bushels and each such unit shall be entitled to at least one representative on the Board.

(2) Each unit that has an annual average soybean production of less than fifteen million (15,000,000) bushels shall be entitled to one representative on the Board.

(3) Each unit which has an annual average soybean production of fifteen million (15,000,000) or more bushels but less than seventy million (70,000,000) bushels shall be entitled to two (2) representatives on the Board.

(4) Each unit which has an annual average soybean production of seventy million (70,000,000) or more bushels but less than two hundred million (200,000,000) bushels shall be entitled to three (3) representatives on the Board.

(5) Each unit which has an annual average soybean production of two hundred million (200,000,000) bushels or more shall be entitled to four (4) representatives on the Board.

(6) For the purposes of this section, average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the year in which production was the highest and the year in which production was the lowest.

(f) [Reserved]

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995; 62 FR 37489, July 14, 1997; 62 FR 41485, Aug. 1, 1997; 65 FR 63768, Oct. 25, 2000; 68 FR 57327, Oct. 3, 2003; 71 FR 69430, Dec. 1, 2006; 74 FR 62676, Dec. 1, 2009; 78 FR 2, Jan. 2, 2013; 80 FR 63910, Oct. 22, 2015; 83 FR 53366, Oct. 23, 2018; 86 FR 61670, Nov. 8, 2021]

§ 1220.202 Term of office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years.

(b) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(c) No member shall serve more than three consecutive 3-year terms in such capacity.

§ 1220.203 Nominations.

All nominations for appointments to the Board under § 1220.204 shall be made in the following manner:

(a) After the issuance of this subpart by the Secretary, nominations shall be obtained by the Secretary as specified in paragraphs (a), (b), and (c) of this section from Qualified State Soybean Boards or for initial Board nominations, eligible organizations deemed qualified to nominate pursuant to paragraph (f) of the section. A Qualified State Soybean Board, or for initial Board nominations, an eligible organization shall only submit nominations for positions on the Board representing the unit, as established under § 1220.201, in which such Qualified State Soybean Board operates.

(b) If the Secretary determines that a unit is not represented by a Qualified State Soybean Board or for initial Board nominations, an eligible organization, then the Secretary may solicit nominations from organizations which represent producers in that unit and from producers residing in that unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary.

(c) Where there is more than one State comprising a unit, the Secretary shall take into consideration the nominations submitted by Qualified State Soybean Boards or for initial Board nominations, eligible organizations, within the unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary. The Secretary shall consider the proportional levels of production in each State comprising the unit when appointing members to the Board representing that unit.

(d) At least two nominations shall be submitted for each position to be filled.

(e) Nominations may be submitted in order of preference and for the initial

Board, in order of preference for staggered terms. Should the Secretary reject any nomination submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a) or (b) of this section, whichever provision is applicable for such unit.

(f) Any organization authorized pursuant to State law to collect assessments from producers may notify the Secretary of the organization's intent to nominate members to the initial Board for the State or unit, as established under § 1220.201, in which such organization operates and is authorized by State law. Such eligibility shall be based only upon the criteria established pursuant to § 1220.228(a)(1). There shall only be one organization authorized per State pursuant to this section to submit nominations to the initial Board. If no such entity exists in a State, any organization meeting those requirements of § 1220.228(a)(2) may request eligibility to submit nominations.

§ 1220.204 Appointment.

From the nominations made pursuant to § 1220.203, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1220.201.

§ 1220.205 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Agree to disclose any relationship with any soybean promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1220.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request nominations for a successor pursuant to § 1220.203, and such successor shall be appointed pursuant to § 1220.204.

§ 1220.207 Alternate members.

(a) The Secretary shall solicit, pursuant to the procedures of § 1220.203, nominations for alternate members of the Board.

(b) The Secretary shall appoint one alternate member of the Board for each unit which has only one member pursuant to § 1220.204 and § 1220.205.

(c) Alternate members of the Board may attend meetings of the Board as a voting member upon the following circumstances:

(1) A member of the Board for the unit which the alternate member represents is absent; and

(2) Such member, or in the case of incapacitation or death of the member, a relative, has contacted the appropriate officer of the Board to inform such officer of such absence;

(d) An alternate member of the Board, when attending Board meetings in an official capacity, shall have the rights, duties and obligations of a Board member.

§ 1220.208 Removal.

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

§ 1220.209 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b)(1) Except for roll call votes, each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a simple majority of those voting.

(2)(i) If a member requests a roll call vote, except as provided in paragraph (b)(2)(ii) of this section, each unit as established under § 1220.201, shall cast one vote for each percent, or portion of a percent, of the average total amount of assessments remitted to the Board

that was remitted from the unit (minus refunds) during each of the three previous fiscal years of the Board under § 1220.223.

(ii)(A) During the first fiscal year of the Board, the percentage used to determine the votes given to a unit will be based on annual average soybean production of the three previous years. If a unit is represented by more than one member, each member representing the unit shall receive an equal percentage of the votes allocated to the unit.

(B) During the second and third year this subpart is in effect, the percentage used to determine the votes given to a unit will be based upon averaging the unit's percentage of annual assessments remitted to the Board (minus refunds).

(iii) Should a member representing a unit not be present, then the other members representing such unit shall vote, on an equal basis if there is more than one member representing the unit present, the number of votes which the absent member would have been entitled to vote.

(iv) A motion will carry on a roll call vote if approved by both a simple majority of all votes cast and a simple majority of all units voting (with the vote of each unit determined by a simple majority of all votes cast by members in that unit).

(3) A member may not cast votes by proxy.

(c) In lieu of a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes of a majority of its members, or if a roll call vote is requested, a simple majority of all votes cast and a simple majority of all units voting by mail, telephone, facsimile, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a regular or special meeting of the Board.

(d) On or after the end of the three-year period beginning on the effective date of this subpart, the Board may recommend to the Secretary changes in the voting procedures of the Board described in paragraph (b) of this section.

§ 1220.210 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.211 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Secretary regarding such proposals;

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

(c) To make rules to effectuate the terms and provisions of this subpart;

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

(e) To disseminate information to producers or producer organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To assign responsibilities relating to budget and program development to the Committee as provided in § 1220.219.

(g) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To contract with Qualified State Soybean Boards to implement plans or projects;

(i) To recommend to the Secretary amendments to this subpart; and

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1220.223 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing

account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1220.212 Duties.

The Board shall have the following duties:

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

(b) To organize and select from among its members a chairperson, vice chairperson, a treasurer and such other officers as may be necessary.

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board.

(d) To employ or contract for such persons to perform administrative functions as it may deem necessary and define the duties and determine the compensation of each.

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information, and industry information plans or projects.

(f) To prepare, and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research, consumer information, and industry information plans or projects, and also including a description of the proposed promotion, research, consumer information, and industry information programs contemplated therein.

(g) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it.

(h) With the approval of the Secretary, to enter into contracts or agreements with appropriate parties, including national nonprofit producer-governed organizations, for the development and conduct of activities authorized under § 1220.230 of this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1220.223. Provided, that the Board shall contract with only one national nonprofit producer-governed organization to administer all projects within a program area.

Any such contract or agreement shall provide that:

(1) The contractor shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective only upon approval of the Secretary; and

(3) The contracting party shall keep complete and accurate records of all of its transactions and make periodic reports to the Board of activities conducted pursuant to a contract and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Board and Secretary may audit the records of the contracting party periodically.

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended.

(j) [Reserved]

(k) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may require and to submit a copy of each such audit to the Secretary.

(l) To give the Secretary the same notice of meetings of the Board and committees as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings.

(m) To submit to the Secretary such information pursuant to this subpart as may be requested.

(n) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses

for soybean and soybean products produced in the United States.

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995]

SOYBEAN PROGRAM COORDINATING COMMITTEE

§ 1220.213 Establishment and membership.

(a) The Board may establish, with the approval of the Secretary, a Soybean Program Coordinating Committee to assist in the administration of this subpart. The Committee shall consist of 15 members. The Committee shall be composed of 10 Board members elected by the Board and 5 producers elected by the Cooperator Organization.

(b) Board representation on the Committee shall consist of the Chairperson and Treasurer of the Board, and eight additional members duly elected by the Board to serve on the Committee. The eight representatives to the Committee elected by the Board shall, to the extent practicable, reflect the geographic and unit distribution of soybean production.

(c) Cooperator Organization representation on the Committee shall consist of five members elected by the Cooperator Organization Board of Directors. The Cooperator Organization shall submit to the Secretary the names of the representatives elected by the Cooperator Organization to serve on the Committee, the manner in which such election was held, and verify that such representatives are producers. The prospective Cooperator Organization representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any soybean entity or with any organization that has or is being considered for a contractual relationship with the Board. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1220.214 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1220.215 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Cooperator Organization, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to appoint representatives pursuant to § 1220.213 above.

§ 1220.216 Procedure.

(a) Attendance of at least 12 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds (⅔) of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than twelve of its members by mail, telephone, facsimile, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

(c) A member may not cast votes by proxy.

§ 1220.217 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed by the Board for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.218 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1220.219 Powers of the Committee.

If established by the Board, the Committee may have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Board regarding such proposals; and

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable.

§ 1220.220 Duties of the Committee.

If established by the Board, the Committee may have the following duties:

(a) To meet and to organize;

(b) To prepare and submit to the Board for approval, budgets on a fiscal period basis of proposed costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein;

(c) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to members in order that the Secretary, or the Secretary's representative, may attend such meetings;

(d) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(e) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

EXPENSES AND ASSESSMENTS

§ 1220.222 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, during any fiscal year, expenses incurred by the Board for administrative staff costs and their benefits shall not exceed 1 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year. Such expenses shall be paid from assessments received pursuant to § 1220.223. The administrative expenses of the Board, including the cost of administrative staff, shall not exceed 5 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year.

(b) The Board shall reimburse the Secretary, from assessments received pursuant to § 1220.223, for administrative costs incurred after an Order has been submitted to the Department pursuant to section 1968(b) of the Act; Provided, that the Board shall only be required to reimburse the Secretary for one-half (50%) of the costs incurred by the Secretary to conduct the refund referendum relating to continuation of authority to pay refunds.

(c)(1) The Board may, with the approval of the Secretary, authorize a credit to Qualified State Soybean Boards of up to 5 percent of the amount to be remitted to the Board pursuant to § 1220.223 and § 1220.228 of this subpart to offset collection and compliance costs relating to such assessments and for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990.

(2) The portion of the credit authorized in paragraph (c)(1) of this section which compensates Qualified State Soybean Boards for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990:

(i) Shall not exceed one-half of such fees paid to State governmental agencies or first purchasers, and;

(ii) Shall not exceed 2.5 percent of the amount of assessments collected and remitted to the Board.

(3) Except for that portion of the credit issued pursuant to paragraph (c)(2) of this section, credits authorized by paragraph (c)(1) of this section will be included as part of the Board's administrative expenses.

§ 1220.223 Assessments.

(a)(1) Except as prescribed by regulations approved by the Secretary or as otherwise provided in this section, each first purchaser of soybeans shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the rate of one-half of one percent (0.5%) of the net market price of the soybeans purchased. Each first purchaser shall remit such assessment to the Board or to a Qualified State Soybean Board, as provided in paragraph (a)(5) of this section.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production, shall remit to a Qualified State Soybean Board or to the Board, as provided in paragraph (a)(5) of this section, an assessment on such soybeans or soybean products at a rate of one-half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof.

(3) In determining the assessment due from each producer under paragraph (a)(1) or (2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed. Producers receiving a refund from a State entity are required to remit that refunded portion to the Board in the manner and form required by the Secretary.

(4) In order for a producer to receive the credit provided for in paragraph (a)(3) of this section, the Qualified State Soybean Board or the first purchaser must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Soybean Board.

(5)(i) If the soybeans, for which an assessment is paid, were grown in a State other than the State which is the situs of the first purchaser, the first purchaser that collects the assessment shall remit the assessment and information as to the State of origin of the soybeans to the Qualified State Soybean Board operating in the State in which the first purchaser is located. The Qualified State Soybean Board operating in the State in which the first purchaser is located shall remit such assessments to the Qualified State Soybean Board operating in the State in which the soybeans were grown. If no such Qualified State Soybean Board exists in such State, then the assessments shall be remitted to the Board. The Board, with the approval of the Secretary, may authorize Qualified State Soybean Boards to propose modifications to the foregoing ''State of Origin'' rule to ensure effective coordination of assessment collections between Qualified State Soybean Boards.

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits said soybeans in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect from the producer the assessments due based on 0.5 percent of the principal loan amount received by the producer and remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

(B) If a producer redeems and subsequently markets soybeans which have been pledged as collateral for a loan issued by the Commodity Credit Corporation, the first purchaser shall collect and remit the assessments due pursuant to paragraph (a)(1) of this section; or if a producer markets such soybeans as processed soybeans or as soybean products, the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

(iii) Qualified State Soybean Boards and the Board shall coordinate assessment collection procedures to ensure

that producers marketing soybeans are required to pay only one assessment per bushel of soybeans and collections are adjusted among States on a mutually agreeable basis.

(b) The collection of assessments pursuant to paragraph (a) of this section, shall commence on and after the date assessments are required to be paid and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board, and to hold such assessments until the Board is constituted, then remit such assessments to the Board.

(c)(1) Each person responsible for the collection of assessments under paragraph (a) of this section, shall collect and remit the assessments to the Board or a Qualified State Soybean Board on a monthly basis or as required by State law, but no less than quarterly, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(2) Any unpaid assessments due the Board or a Qualified State Soybean Board from a person responsible for remitting assessments to the Board or a Qualified State Soybean Board pursuant to paragraph (a) of this section, shall be increased two percent (2%) each month beginning with the day following the date such assessments were due under this subpart. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(3) The amounts payable pursuant to this section shall be computed monthly on unpaid assessments and shall include any unpaid late charges previously applied pursuant to this section.

(4) For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board or a Qualified State Soybean Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(d) Prior to the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(1) and subject to section 1969(n)(3) of the Act.

(e) Following the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure annually that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(2) and subject to section 1969(n)(3) of the Act.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31096, July 14, 1992; 84 FR 20771, May 13, 2019]

§§ 1220.224–1220.227 [Reserved]

§ 1220.228 Qualified State Soybean Boards.

(a)(1) Any soybean promotion entity that is authorized by State statute to collect assessments required by State law from soybean producers may notify the Board of its election to be the Qualified State Soybean Board for the State in which it operates so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organization. Only one such entity may make such election or be qualified pursuant to paragraph (a)(2) of this section. Such entity, upon making such election, agrees to the following:

(i) To conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(ii) Provide a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(iii) Collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(iv) Remit to the Board each assessment paid and remitted to it, minus authorized credits issued pursuant to § 1220.222(c) and credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted

to it unless the Board determines a different date for remittance of assessments;

(v) If the entity is authorized or required to pay refunds to producers, any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to §1220.223(a)(3);

(vi) [Reserved]

(vii) Furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(viii) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(ix)(A) Except as otherwise provided in paragraph (a)(1)(ix)(B) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(B) The prohibition in paragraph (a)(1)(ix)(A) of this section, shall not apply to—

(*1*) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the Order;

(*2*) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(*3*) The development and recommendation of amendments to this subpart.

(2) If no entity elects to serve as a Qualified State Soybean Board within a State pursuant to paragraph (a)(1) of this section, any State soybean promotion entity that is organized and operating within a State, and receives assessments or contributions from producers and conducts soybean or soybean product promotion, research, consumer information, or industry information programs, may apply for certification as the Qualified State Soybean Board for such State so that producers may receive credit pursuant to §1220.223(a)(3) for contributions to such organizations. All provisions of this subpart applicable to Qualified State Soybean Boards will be applicable to such entity. The Board shall review such applications for certification and shall make a determination as to the certification of each applicant.

(b) In order for the State soybean entity to be certified by the Board pursuant to paragraph (a)(2) of this section, as a Qualified State Soybean Board, the entity must:

(1) Conduct activities as defined in §1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such State entity will collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization will remit to the Board each assessment paid and remitted to it, minus credits issued pursuant to §1220.222(c) and authorized credits issued to producers pursuant to §1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(5)–(6) [Reserved]

(7) Certify to the Board that it will furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(8) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair

or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(9)(i) Except as otherwise provided in paragraph (b)(9)(ii) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(ii) The prohibition in paragraph (b)(9)(i) of this section, shall not apply to—

(A) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart;

(B) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(C) The development and recommendation of amendments to this subpart.

(c) Notwithstanding any other provisions of this subpart, and provided that activities of a Qualified State Soybean Board are authorized under the Act and this subpart, the Board shall not have the authority to:

(1) Establish guidelines, regulations, or rules which would restrict or infringe upon a Qualified State Soybean Board's authority to determine administrative or program expenditure allocations or administrative or program implementation; and

(2) Direct Qualified State Soybean Boards to participate or not participate in program activities or implementation.

(d) The Board shall establish procedures, after an opportunity for public comment and subject to approval of the Secretary, which provide Qualified State Soybean Boards with a right to present information to the Board prior to any determinations relating to nonparticipation as a Qualified State Soybean Board following initial election or determination as a Qualified State Soybean Board.

(e) Entities authorized or required to pay refunds to producers must certify to the Board that any requests from producers for such refunds for contributions to it by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to §1220.223(a)(3). Entities not authorized by State statute but organized and operating within a State and certified by the Board pursuant to paragraph (a)(2) of this section must provide producers an opportunity for a State refund and must forward that refunded portion to the Board.

[56 FR 31049, July 9, 1991, as amended at 60 FR 58500, Nov. 28, 1995; 61 FR 50694, Sept. 27, 1996; 72 FR 2769, Jan. 23, 2007; 84 FR 20771, May 13, 2019]

§1220.229 Influencing governmental action.

(a) Except as otherwise provided in paragraph (b) of this section, funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply to—

(1) The development and recommendation of amendments to this subpart;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart; or

(3) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

§1220.230 Promotion, research, consumer information, and industry information.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans or projects authorized in this subpart. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate promotion, research, consumer information, and industry information activities with respect to soybean and soybean products;

(2) The establishment and conduct of research, and studies with respect to the sale, distribution, marketing and utilization of soybean and soybean products and the creation of new products thereof, to the end that marketing and utilization of soybean and soybean products may be encouraged, expanded, improved or made more acceptable; and

(3) Such other activities as are authorized by the Act and this subpart.

(b) Each plan or project described in paragraph (a) of this section, shall be periodically reviewed or evaluated by the Board to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information, and industry information. If it is found by the Board that any such plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project.

(c) No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product. In carrying out any plan or project funded by the Board described in paragraph (a) of this section, no preference shall be given to a brand or trade name of any soybean product without the approval of the Board and the Secretary.

REPORTS, BOOKS, AND RECORDS

§ 1220.241 Reports.

Each producer marketing processed soybeans or soybean products of that producer's own production and each first purchaser responsible for the collection of assessments under § 1220.223 shall be required to report to the Board periodically such information as may be required by the regulations recommended by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment;

(b) The amount of assessments remitted;

(c) The basis, if necessary, to show why the remittance is less than one-half percent (0.5%) of the net market price per bushel of soybeans purchased multiplied by the number of bushels purchased; and

(d) The date any assessment was paid.

§ 1220.242 Books and records.

(a) Except as provided in paragraph (b) of this section, each person who is subject to this subpart shall maintain and make available for inspection by the Board or Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Any producer who plants less than 25 acres of soybeans annually and does not market such soybeans shall not be required to maintain books or records pursuant to this subpart.

§ 1220.243 Confidential treatment.

Except as otherwise provided in the Act, financial or commercial information that is obtained under the Act and this subpart and that is privileged and confidential shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this part shall have access to such information.

MISCELLANEOUS

§ 1220.251 Proceedings after termination.

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

(b) The trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1220.212(h);

(3) From time to time account for all receipts and disbursements; and

(4) Deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct, and upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information plans or projects authorized pursuant to this subpart.

§ 1220.252 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1220.253 Personal liability.

No member, employee or agent of the Board, including employees, agents or board members of Qualified State Soybean Boards, acting pursuant to authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1220.254 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1220.251 shall apply to determine disposition of all such property.

(b) Notwithstanding the provisions of paragraph (a) of this section, if patents, copyrights, inventions, or publications are developed by the use of funds remitted to the Board under this subpart. Should patents, copyrights, inventions or publications be developed through the use of funds remitted to the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions,

or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication.

§ 1220.255 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any Qualified State Soybean Board recognized, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1220.256 Separability.

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

§ 1220.257 OMB control numbers.

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

[56 FR 31049, July 9, 1991, as amended at 61 FR 50694, Sept. 27, 1996]

Subpart B—Rules and Regulations

SOURCE: 57 FR 29439, July 2, 1992, unless otherwise noted.

DEFINITIONS

§ 1220.301 Terms defined.

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

§ 1220.302 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each first purchaser. The first purchaser shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the exemption.

[70 FR 2759, Jan. 14, 2005; 80 FR 80231, Dec. 31, 2015]

ASSESSMENTS

§ 1220.310 Assessments.

(a) A 0.5 percent of the net market price per bushel assessment on soybeans marketed shall be paid by the producer of the soybeans in the manner designated in § 1220.311.

(b) If more than one producer shares the proceeds received for the soybeans marketed, each such producer is obligated to pay that portion of the assessments which is equivalent to each producer's proportionate share of the proceeds.

(c) Failure of the first purchaser to collect the assessment on each bushel of soybeans marketed as designated in § 1220.311 shall not relieve the producer of the producer's obligation to pay the assessment to the appropriate Qualified State Soybean Board or the United Soybean Board as required in § 1220.312.

§ 1220.311 Collection and remittance of assessments.

(a) Except as otherwise provided in this section, each first purchaser making payment to a producer for soybeans marketed by a producer shall collect from that producer at the time of settlement of that producer's account an assessment at the rate of 0.5 percent of the net market price per bushel of soybeans marketed and shall be responsible for remitting the assessment to the Qualified State Soybean Board or the United Soybean Board as provided in § 1220.312. The first purchaser shall give to the producer a receipt indicating payment of the assessment. The receipt shall be any document issued by the first purchaser that contains the information requested in § 1220.314(a).

(b) A first purchaser who purchases soybeans pursuant to a contract with a producer, either on a volume basis or on a per acre basis, shall be responsible for remitting the assessment due on soybeans purchased as required in § 1220.312. Such assessment shall be based upon 0.5 percent of the net market price specified or established in the contract and shall be collected at the time of payment to the producer. If the net market price is not specified or established in the contract the assessment shall be based on fair market value as specified in paragraph (c) of this section below.

(c) Any producer marketing processed soybeans or soybean products of that producer's own production either directly or through retail or wholesale outlets shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon date of sale of the processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of the sale as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(d) Any producer marketing processed soybeans or soybean products of that producer's own production shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate of 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment

shall attach upon the date of final settlement for such processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of final settlement as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in §1220.312.

(e) A producer delivering soybeans of the producer's own production against a soybean futures contract shall be responsible for remitting an assessment at the rate of 0.5 percent of net market price as specified in settlement documents. The assessment shall attach at the time of delivery and the producer shall remit the assessment due in accordance with §1220.312.

(f) A producer who forfeits soybeans of that producer's own production which were pledged as collateral on a loan issued by Commodity Credit Corporation shall pay an assessment. The assessment shall attach upon the date the settlement statement is prepared and issued to the producer by the Commodity Credit Corporation and shall be 0.5 percent of the principal amount of the loan for the soybeans as specified by Commodity Credit Corporation in the settlement statement. The Commodity Credit Corporation shall collect the assessment and then remit the assessment due in accordance with §1220.312.

§1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

(a) Each first purchaser and each producer responsible for the remittance of assessments shall remit assessments and submit a report of assessments to the Qualified State Soybean Board in the State in which each first purchaser or each producer responsible for the remittance of assessments is located or if there is no Qualified State Soybean Board in such State, then to the United Soybean Board as provided in this section.

(b) First purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending on the State or region in which the first purchasers or producers are located. The reporting period for each State and region shall be as follows:

Monthly	Quarterly
Arkansas	Alabama
Iowa	Delaware
Kansas	Florida
Kentucky	Georgia
Michigan	Illinois
Minnesota	Indiana
Missouri	Louisiana
Mississippi	Maryland
North Carolina	North Dakota
Tennessee	Nebraska
Wisconsin	New Jersey
	Ohio
	Oklahoma
	Pennsylvania
	South Carolina
	South Dakota
	Texas
	Virginia
	Eastern Region
	Western Region

(c) *Reports.* Each first purchaser or producer responsible for remitting assessments shall make reports on forms made available by the United Soybean Board or on Qualified State Soybean Board forms which contain the information required in §1220.241 and are approved by the Board. A first purchaser with multiple facilities or purchasing locations within a State shall have the option to submit a single, consolidated report specifying the combined volume of soybeans purchased or the net market value of all soybeans purchased from the producers in the State. Reports shall be submitted with assessments due in accordance with the provisions of paragraph (d) of this section.

(d) *Remittances.* Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be

received subject to collection and payment at par.

(e) *Receipt of Reports and Remittances.* The timeliness of receipt of reports and assessments by the Board or Qualified State Soybean Board shall be based on the applicable postmark date or the date actually received by the Board or the Qualified State Soybean Board whichever is earlier.

[57 FR 29439, July 2, 1992, as amended at 58 FR 40732, July 30, 1993; 60 FR 58500, Nov. 28, 1995; 68 FR 69954, Dec. 16, 2003]

§ 1220.313 Qualified State Soybean Boards.

The following State soybean promotion organizations shall be Qualified State Soybean Boards. First purchasers and producers responsible for remitting assessments located in States which have a Qualified State Soybean Board shall remit assessments accompanied by the required reports to the Qualified State Soybean Board in the State in which the first purchaser or producer responsible for remitting assessments is located.

(1) Alabama Soybean Producers Board

(2) Arkansas Soybean Promotion Board

(3) Delaware Soybean Board

(4) Florida Soybean Advisory Council

(5) Georgia Agricultural Commodity Commission for Soybeans

(6) Illinois Soybean Program Operating Board

(7) Iowa Soybean Promotion Board

(8) Indiana Soybean Development Council, Inc.

(9) Kansas Soybean Commission

(10) Kentucky Soybean Promotion Board

(11) Louisiana Soybean Promotion Board

(12) Maryland Soybean Board

(13) Soybean promotion Committee of Michigan

(14) Minnesota Soybean Research and Promotion Council

(15) Mississippi Soybean Promotion Board

(16) Missouri Soybean Merchandising Council

(17) Nebraska Soybean Development, Utilization, and Marketing Board

(18) New Jersey Soybean Board

(19) North Carolina Soybean Producers Association

(20) North Dakota Soybean Council

(21) Ohio Soybean Council Board of Trustees

(22) Oklahoma Soybean Commission

(23) Pennsylvania Soybean Board

(24) South Carolina Soybean Board

(25) South Dakota Soybean Research and Promotion Council

(26) Tennessee Soybean Promotion Board

(27) Texas Soybean Producers Board

(28) Virginia Soybean Board

(29) Wisconsin Soybean Marketing Board, Inc.

§ 1220.314 Document evidencing payment of assessments.

(a) Each first purchaser responsible for remitting an assessment to a Qualified State Soybean Board or the United Soybean Board is required to give to the producer from whom the first purchaser collected an assessment written evidence of payment of the assessment containing the following information:

(1) Name and address of the first purchaser.

(2) Name of producer who paid assessment.

(3) Number of bushels sold.

(4) Net market price.

(5) Total assessments paid by the producer.

(6) Date.

(7) State in which soybeans were grown.

(b) [Reserved]

§§ 1220.330–1220.332 [Reserved]

Subparts C–E [Reserved]

Subpart F—Procedures To Request a Referendum

SOURCE: 69 FR 13461, Mar. 23, 2004, unless otherwise noted.

DEFINITIONS

§ 1220.600 Act.

Act means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.601 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.602 Administrator, FSA.

Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.603 Farm Service Agency.

Farm Service Agency also referred to as ''FSA'' means the Farm Service Agency of USDA.

§ 1220.604 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1220.605 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.606 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1220.607 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and to be responsible for the day-to-day operation of the FSA State office, or the person acting in such capacity.

§ 1220.608 Order.

Order means the Soybean Promotion and Research Order.

§ 1220.609 Person.

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

§ 1220.610 Producer.

Producer means any person engaged in the growing of soybeans in the United States who owns or who shares the ownership and risk of loss of such soybeans.

§ 1220.611 Public notice.

Public notice means a notice published in the FEDERAL REGISTER, not later than 60 days prior to the last day of the Request for Referendum period, that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to explanation of producers' rights, procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the United Soybean Board is required to provide producers, in writing, this same information during the same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletters, and the like.

§ 1220.612 Representative period.

Representative period means the period designated by the Secretary pursuant to section 1970 of the Act.

§ 1220.613 Secretary.

Secretary means the Secretary of Agriculture of the United States Department of Agriculture (USDA) or any other officer or employee of USDA to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.614 Soybeans.

Soybeans means all varieties of glycine max or glycine soja.

§ 1220.615 State and United States.

State and United States include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

PROCEDURES

§ 1220.616 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum will be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section are not met, a referendum will not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States will be determined by the Secretary using data provided by USDA.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009; 79 FR 12039, Mar. 4, 2014]

§ 1220.617 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.618 Eligibility.

(a) *Eligible producers.* Each person who was a producer and provides evidence that they or the producer entity they represent has paid an assessment on soybeans during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy Registration.* Proxy registration is not authorized, except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

§ 1220.619 Time and Place for Requesting a Referendum.

(a) The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.622 during the normal business hours of each county FSA office.

(b) Producers can determine the location of county FSA offices by contacting the nearest county FSA office in their State or by an online search of FSA Web sites.

(c) Each eligible person shall request a referendum in the county FSA office where FSA maintains and processes the producer's, corporation's, or other entities administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or

other legal entity owns or rents land. An individual or authorized representative of a corporation who grows soybeans in more than one county would request a referendum in the county FSA office where the individual or corporation or other entity does most of its business.

[69 FR 13461, Mar. 23, 2004, as amended at 79 FR 12039, Mar. 4, 2014]

§ 1220.620 Facilities.

Each county FSA office will provide:

(a) A polling place that is well known and readily accessible to producers in the county and that is equipped and arranged so that each person can complete and submit their request in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no request can be read or removed without breaking seals on the container.

§ 1220.621 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no'' vote. Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously certifies eligibility and requests that a referendum be conducted.

§ 1220.622 Certification and request procedures.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary.

(1) Each eligible producer shall be required to complete form LS–51–1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on form LS–51–1 and sign it certifying that:

(i) The person or the producer entity they represent was a producer of soybeans during the representative period;

(ii) The individual requesting a referendum on behalf of a corporation or other entity is authorized to do so; and

(iii) The individual has submitted only one request for a referendum unless they are also an authorized representative for another eligible corporation or other entity.

(2) The producer, corporation, or other entity must also provide documentation, such as a sales receipt, showing that the producer, corporation, or other entity has paid an assessment on soybeans during the representative period.

(3) Only a completed and signed form LS–51–1 accompanied by documentation showing that soybean assessments were paid during the representative period shall be considered a valid request for a referendum.

(b) To request a referendum, eligible producers may obtain form LS–51–1 in person, by mail, or by facsimile during the request for referendum period from the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS–51–1 via the Internet at a Web site provided by the Secretary. For those persons who chose to obtain form LS–51–1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For producers, corporations, or other entities not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

(c) Producers or producer entities may return form LS–51–1 and the accompanying documentation in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–51–1 returned in-person or by facsimile, must

be received in the appropriate county FSA office prior to the close of the work day on the final day of the Request for Referendum period to be considered a valid request. Form LS–51–1 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the Request for Referendum period and must be received in the county FSA office prior to the start of canvassing Form LS 51–1.

(d) Producers who obtain form LS–51–1 in-person at the appropriate FSA county office may complete and return the form the same day, accompanied by documentation, such as a sales receipt, showing that soybean assessments were paid during the representative period.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009; 79 FR 12039, Mar. 4, 2014]

§ 1220.623 Canvassing requests.

(a) Canvassing of Form LS–51–1 shall take place at the opening of county FSA offices on the 5th business day following the Request for Referendum period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the requests and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) The request for referendum should be canvassed as follows:

(1) *Number of eligible requests for a referendum.* Each person who was a producer during the representative period and provides documentation to prove that they paid an assessment will be considered eligible to request a referendum.

(2) *Number of ineligible requests for a referendum.* If FSA cannot determine that a producer is eligible based on the submitted documentation or if the producer fails to submit the required documentation, the producer shall be determined to be ineligible. FSA shall notify ineligible producers in writing as soon as practicable but no later than the 8th business day following the final day of the Request for Referendum period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the producer's eligibility and notify the producer of the decision.

(d) *Number of valid requests for referendum.* A person has been declared eligible and has provided and completed all of the required information on form LS–51–1.

(e) *Number of invalid requests for a referendum.* An invalid request for referendum includes, but is not limited to the following:

(1) Form LS–51–1 is not signed or all required information has not been provided;

(2) Form LS–51–1 and supporting documentation returned in-person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 and supporting documentation returned by mail was not postmarked by midnight of the final day of the Request for Referendum period;

(4) Form LS–51–1 and supporting documentation returned by mail was not received in the county FSA office prior to canvassing of the ballots;

(5) Form LS–51–1 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS–51–1 and supporting documentation not returned to the appropriate county FSA office.

§ 1220.624 Confidentiality.

The names of persons requesting a referendum shall be confidential and may not be divulged except as the Secretary may direct.

§ 1220.625 Counting requests.

(a) The requests for a referendum shall be counted by county FSA offices on the same day as the requests are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the Request for Referendum period.

(b) Requests for a referendum shall be counted as follows:

(1) Total number of producers who returned a Request for Referendum form LS–51–1;

(2) Number of ineligible producers requesting a referendum;

(3) Number of eligible producers requesting a referendum;

(4) Number of valid requests for a referendum; and

(5) Number of invalid requests for a referendum.

§ 1220.626 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event later than 18th business day following the final day of the specified period, have prepared and certified the county summary of requests on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.627 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the Request for Referendum period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official results at a Web site address provided by the Secretary. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours at an address provided by the Secretary.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009; 79 FR 12040, Mar. 4, 2014]

§ 1220.629 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Request for Soybean Referendum,'' all of the form LS–51–1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by

the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1220.630 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER

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Subparts C–E [Reserved]

AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 73 FR 25407, May 6, 2008, unless otherwise noted.

Subpart A—Sorghum Promotion, Research, and Information Order

DEFINITIONS

§ 1221.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1221.2 Board.

Board or *Sorghum Promotion, Research, and Information Board* means the administrative body established pursuant to §1221.100, or such other name as recommended by the Board and approved by the Secretary.

§ 1221.3 Calendar year.

Calendar year means the 12-month period from January 1 through December 31.

§ 1221.4 Certified organization.

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

§ 1221.5 Conflict of interest.

Conflict of interest means a situation in which a representative or employee of the Board has a direct or indirect financial interest in a person or business that performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1221.6 Crop year.

Crop year means the time period by which the USDA reports crop production for sorghum and is indicated by the calendar year in which sorghum is normally harvested.

§ 1221.7 Customs.

Customs means the U.S. Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1221.8 Department.

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

§ 1221.9 First handler.

First handler means the first person who buys or takes possession (excluding a common or contract carrier of sorghum owned by another) of more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage from producers in a calendar year for marketing. The term first handler includes a producer who markets sorghum of the producer's own production directly to consumers. In any case in which sorghum is pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the sorghum is forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation will be considered a first handler.

§ 1221.10 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1221.11 Handle.

Handle means to engage in the receiving or acquiring of sorghum and in the shipment (except as a common or contract carrier of sorghum owned by another) or sale of sorghum, or other activity causing sorghum to enter the current of commerce.

§ 1221.12 Harvest.

Harvest means combining or threshing sorghum for grain and/or severing the stalks from the land with mechanized equipment.

§ 1221.13 Importer.

Importer means any person importing more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or purchases sorghum outside of the United States for sale in the United States, and who is listed as the importer of record for such sorghum.

§ 1221.14 Information.

Information means information and programs that are designed to develop new markets and marketing strategies; increase market efficiency; enhance the image of sorghum on a national or international basis; and assist producers in meeting their conservation objectives. These include, but are not exclusive to:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of sorghum;

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the sorghum industry, and activities to enhance the image of the sorghum industry.

§ 1221.15 Market.

Market means to sell or otherwise dispose of sorghum into intrastate, interstate, or foreign commerce by buying, distributing, or otherwise placing sorghum into commerce.

§ 1221.16 Net market price.

Net market price means the sales price, or other value, per volumetric unit, received by a producer for sorghum after adjustments for any premium or discount.

§ 1221.17 Net market value.

Net market value means:

(a) Except as provided in paragraph (b)and (c) of this section, the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for sorghum after adjustments for any premium or discount.

(b) For imported sorghum, the total value paid by the importer for the sorghum as reported on the appropriate Customs form; or

(c) For sorghum pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, the principal amount of the loan.

§ 1221.18 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1221.19 Part and subpart.

Part means the Sorghum Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1221.20 Person.

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

§ 1221.21 Producer.

Producer means any person who is engaged in the production and sale of sorghum in the United States and who owns, or shares the ownership and risk of loss of, the sorghum.

§ 1221.22 Production.

Production, as used in §1221.100, means:

(a) for the purpose of establishing the initial Board in paragraphs (a), (b), (c), (d), and (e) of §1221.100, the volume of grain sorghum produced during the last 5 crop years, excluding the high and low years, and

(b) For the purpose of reapportionment in paragraphs (e) and (f) of §1221.100, the total assessments collected by the Board during the last 5 crop years, excluding the high and low years.

§ 1221.23 Promotion.

Promotion means any action taken to present a favorable image of sorghum to the public and the end-user industry for the purpose of improving the competitive position of sorghum and stimulating the sale of sorghum. This includes paid advertising and public relations.

§ 1221.24 Qualified sorghum producer organization.

Qualified sorghum producer organization means a qualified State-legislated sorghum promotion, research, and education commission or organization, approved by the Secretary. For States without a qualified State-legislated sorghum promotion, research, and education commission or organization, qualified sorghum producer organization means any qualified organization that has the primary purpose of representing sorghum producers, has sorghum producers as members, and that is approved by the Secretary.

§ 1221.25 Referendum.

Referendum means a referendum conducted by the Secretary pursuant to the Act whereby producers and importers are provided the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting.

§ 1221.26 Research.

Research means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of sorghum, including, but not limited to, research relating to yield, nutritional value, cost of production, new product development, inbred and hybrid development, nutritional value, health research, and marketing of sorghum.

§ 1221.27 Secretary.

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

§ 1221.28 Sorghum.

Sorghum means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus Sorghum of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

§ 1221.29 State.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1221.30 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1221.31 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1221.32 United States.

United States or *U.S.* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SORGHUM PROMOTION, RESEARCH, AND INFORMATION BOARD

§ 1221.100 Establishment and representation.

There is hereby established a Sorghum Promotion, Research, and Information Board, hereinafter called the Board. Representation includes, but is not limited to, fixed State seats determined by total production with at-large seats to allow representation from a broad geographical area. The Board shall initially be composed of 13 representatives, with the maximum number of producers from one State limited to 6, appointed by the Secretary from nominations as follows:

(a) The largest production State based on total production shall have 5 sorghum producers to serve as representatives.

(b) The second largest production State based on total production shall have 3 sorghum producers to serve as representatives.

(c) The third largest production State based on total production shall have one sorghum producer to serve as a representative.

(d) There shall be 4 sorghum producers to serve as at-large national representatives with at least two representatives appointed from States not described in paragraphs (a), (b), and (c) of this section.

(e) If the value of assessments on imported sorghum reaches or exceeds the production of the third largest sorghum production State, there shall be one importer to serve as a representative plus an additional at-large national representative, with the maximum number of producers from one State being increased from six to seven.

(f) At least once every 5 years, the Board will review the geographical distribution of production of sorghum in the United States, the production of sorghum in the United States, and the value of assessments on sorghum imported into the United States. The review will be based on Board assessment records and statistics from the USDA. If warranted, the Board may recommend to the Secretary that representation on the Board be altered to reflect any changes in geographical distribution of domestic sorghum production. If, in the review, the Board determines that the value of assessments on sorghum imported into the United States exceeds 15 percent of the production of sorghum, the Board shall recommend to the Secretary that the nomination procedures and appointments to the Board be altered as necessary or appropriate to facilitate the equitable representation of importers on the Board.

§ 1221.101 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations for State-specific and at-large national seats shall be obtained by the Secretary from eligible organizations certified under § 1221.107. Certified eligible organizations representing producers in a State, or when making nominations for at-large seats, shall submit to the Secretary at least two nominees for each vacant seat. If the Secretary determines that a State is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the State.

(b) If so required pursuant to § 1221.100(f), at least two nominations for the importer representative shall be submitted by the Board to the Secretary.

(c) After the establishment of the initial Board, the Secretary shall announce when a vacancy does or will exist. Nominations for subsequent Board representatives shall be submitted to the Secretary not less than 90 days prior to the expiration of the terms of the representatives whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to section 1221.105.

(d) When there is more than one certified eligible organization representing a State or when the Secretary solicits nominations from organizations and persons residing in that State, or when eligible certified organizations are nominating persons for at-

large positions, eligible certified organizations may caucus and jointly nominate two qualified producers for each position on the Board for which a representative is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that State, or to fill an at-large position.

§ 1221.102 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any sorghum promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

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

§ 1221.103 Appointment.

From the nominations made pursuant to § 1221.101, the Secretary shall appoint the representatives of the Board on the basis of representation provided in § 1221.100.

§ 1221.104 Term of office.

(a) The term of office for the representatives of the Board shall be three years, except for the initial term, pursuant to paragraph (c) of this section.

(b) Representatives may serve a maximum of 2 consecutive 3-year terms.

(c) When the Board is first established, the Secretary shall establish staggered terms as follows:

(1) Largest Production State—2 representatives shall serve a 2-year term, 1 representative shall serve a 3-year term, and 2 representatives shall serve a 4-year term.

(2) Second Largest Production State—1 representative shall serve a 2-year term, 1 representative shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(3) Third Largest Production State—The representative shall serve a 3-year term.

(4) At-large national—1 representative shall serve a 2-year term, 2 representatives shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(5) States with multiple representatives shall have their staggered terms assigned by the Secretary. At-large national representatives shall also have their staggered terms assigned by the Secretary.

(6) Representatives serving initial terms of 2 or 4 years shall be eligible to serve a single term of 3 years after their initial 2- or 4-year term.

(d) Each representative shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(e) Any successor appointed pursuant to § 1221.105 serving 1 year or less may serve two consecutive 3-year terms.

§ 1221.105 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, a successor for the unexpired term of such representative shall be appointed by the Secretary pursuant to § 1221.103 from the most recent list of nominations for the position pursuant to § 1221.101 or the Secretary shall request nominations for a successor pursuant to § 1221.101, except that said nomination and replacement shall not be required if an unexpired term is less than 6 months.

§ 1221.106 Removal.

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

§ 1221.107 Certification of organizations.

(a) The eligibility of State, regional, or national organizations to participate in making nominations for membership on the Board shall be certified by the Secretary. Those organizations that may seek certification include:

(1) State-legislated sorghum promotion, research, and information organizations;

(2) Organizations whose primary purpose is to represent sorghum producers within a State, region, or at the national level; or,

(3) Organizations that have sorghum producers as members.

(b) Such eligibility shall be based, in addition to other information, upon a report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

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

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

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

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

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

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of State specific and national at-large members to the Board. Any sorghum producer organization found eligible by the Secretary under this section shall be certified by the Secretary, and the Secretary's determination as to eligibility shall be final.

§ 1221.108 Procedure.

(a) At a Board meeting, it will be considered a quorum when a simple majority of the voting representatives are present.

(b) At the start of each fiscal period, the Board will approve a chairperson, vice chairperson, and secretary/treasurer who will conduct meetings throughout that period.

(c) All Board representatives and the Secretary or the Secretary's designee will be notified at least 30 days in advance of all Board and committee meetings, unless an emergency meeting is declared.

(d) Each voting representative of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of the total votes of the Board representatives present at the meeting.

(e) It will be considered a quorum at a committee meeting when a simple majority of those assigned to the committee are present at the meeting. Committees may consist of individuals other than Board representatives, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a simple majority of the Board representatives by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all representatives must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting representative.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1221.109 Compensation and reimbursement.

The representatives of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board representatives.

§ 1221.110 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, and organize, and select from among the representatives of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the representatives, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans, or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: Any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Secretary considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with § 1221.112;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of Board and committee meetings as is given to representatives in order that the Secretary's representative(s) may attend such meetings;

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

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and with the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the sorghum industry's position in the marketplace; maintain and expand existing markets and uses for sorghum; and to carry out programs, plans, and projects designed to provide maximum benefits to the sorghum industry;

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

(p) To invest funds in accordance with §1221.115.

§ 1221.111 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, State, national, and foreign governments, other than recommending to the Secretary amendments to this part; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that is false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1221.112 Budget and expenses.

(a) Prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget that increases the budget must be approved by the Secretary. Shifts of funds that do not result in an increase in the Board's approved budget and that are consistent with this subpart and the Board's governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the

Board shall be expended only for start-up costs and capital outlays and are limited to the first fiscal period of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects in accordance with the Order. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board shall determine annually an allocation amount no less than 15 percent but no more than 25 percent of the total assessments collected on all sorghum available for any fiscal period, less the expenses pursuant to paragraph (i), for use by qualified sorghum producer organizations pursuant to §1221.128 for State programs of generic promotion, research, and information. Amounts allocated by the Board for State generic promotion, research, and information programs will be based on requests submitted to the Board by qualified sorghum producer organizations when it is determined that these requests meet the goals and objectives stated in the Act and Order. The request shall include detailed programs, plans, or projects with budgets. Qualified sorghum producer organizations shall not submit requests for State generic promotion, research, and information programs that exceed the annual allocation amount determined by the Board which shall be the product of:

(1) The State's proportional contribution based on reports submitted by first handlers pursuant to §1221.124(a) to total assessments remitted on all sorghum for the previous fiscal period; multiplied by

(2) The total assessments collected on all sorghum for the previous fiscal period less expenses pursuant to paragraph (i) of this section.

(i) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal period except for the initial fiscal period. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(j) The Board shall allocate all other funds available for any fiscal period, to the extent practicable, subject to paragraphs (g), (h), (i), (j), and (k) of this section on programs, plans, or projects, as provided for in §1221.121.

(k) The Board shall determine annually the allocation of total funds pursuant to this section, with the approval of the Secretary.

[73 FR 25407, May 6, 2008, as amended at 83 FR 35106, July 25, 2018]

§1221.113 Financial statements.

(a) As requested by the Secretary, the Board shall prepare and submit financial statements to the Secretary on a monthly basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, fiscal period-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§1221.114 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal period excess funds in a reserve so established, *provided* that funds in the reserve shall not exceed one fiscal period's anticipated expenses.

§1221.115 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any State or any political subdivision of a State; interest bearing accounts or

certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

§ 1221.116 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) First handlers of domestic sorghum shall be responsible for collecting assessments from producers on all domestically handled sorghum. This includes sorghum of the first handler's own production. Grain pledged as collateral for a Commodity Credit Corporation price support loan program shall be considered handled sorghum. A first handler shall not collect an assessment on sorghum from a producer when said producer presents documentation demonstrating that an assessment has previously been collected on said sorghum.

(c) The following assessment rates for sorghum shall apply:

(1) Grain sorghum shall be initially assessed at a rate of 0.6 percent of net market value received by the producer pursuant to paragraph (e) of this section; and

(2) Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage shall be initially assessed at a rate of 0.35 percent of net market value received by the producer pursuant to paragraph (e) of this section.

(d) Importers of sorghum shall pay an assessment to the Board through Customs on sorghum imported into the United States. The following apply to imported sorghum:

(1) The assessment rates for imported sorghum shall be the same or equivalent to the rates for sorghum produced in the United States.

(2) The import assessment shall be uniformly applied to imported sorghum that is identified by the numbers 1007.00.0020 and 1007.00.0040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported sorghum shall be paid when the sorghum enters the United States.

(4) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The Board will review the assessment rates and may make recommendations to modify the assessment rates to the Secretary. Assessment rates may be raised or lowered no more than 0.2 percent of net market value received by producers and importers in any one calendar year. The maximum assessment rate cannot exceed 1 percent of the net market value received by producers and importers.

(f) Each person responsible for collecting assessments under paragraph (b) of this section shall remit the amount due to the Board in such a manner as required by regulations recommended by the Board and prescribed by the Secretary.

(g) Any unpaid assessment due to the Board pursuant to this section shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a later date than the date prescribed by this subpart because of a person's failure to timely submit a report to the Board shall be considered to have been payable by the date it would have been due if the report had been filed timely. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board.

(h) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(j) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(k) The collection of assessments pursuant to this section shall begin with respect to sorghum handled on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

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

(m) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in §§1221.124 and 1221.125 shall be mailed to the location designated by the Board.

§ 1221.117 Exemptions.

(a) Any importer of less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under § 1221.116.

(b) An importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. An importer shall certify that the importer will import less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the sorghum was actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

(g) A producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP), or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer or importer so exempted shall continue to be obligated

to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(h) To apply for an exemption under this section, the applicant shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or importer continues to be eligible for the exemption.

(i) A producer or importer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

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

(j) If the applicant complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or importer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(k) The producer or importer shall provide a copy of the Certificate of Exemption to each first handler. The first handler shall maintain records showing the name and address of the exempt producer or importer and the exemption number assigned by the Board.

(l) The exemption will apply at the first reporting period following the issuance of the exemption.

[73 FR 25407, May 6, 2008, as amended at 80 FR 82032, Dec. 31, 2015]

PROMOTION, RESEARCH, AND INFORMATION

§ 1221.121 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including consumer and industry information, with respect to sorghum; and

(2) The establishment and conduct of research with respect, but not limited to: The yield, use, nutritional value and benefits, sale, distribution, and marketing of sorghum, and the creation of new products thereof, to the end that the marketing and use of sorghum may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of sorghum.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Sorghum of all origins shall be treated equally.

§ 1221.122 Independent evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every five years, authorize

and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1221.123 Patents, copyrights, inventions, trademarks, information, publications, and product formulations.

(a) Any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1221.132 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

REPORTS, BOOKS, AND RECORDS

§ 1221.124 Reports.

(a) Each first handler, on a State-by-State basis, will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of bushels or tons of domestic sorghum within the State that were marketed to the first handler;

(2) Number of bushels or tons of domestic sorghum within the State on which an assessment was paid;

(3) The amount of assessments remitted on sorghum within the State;

(4) Date that any assessments were paid within the State;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market price multiplied by the number of bushels or tons within the State that were marketed to the first handler; and

(6) The first handler's tax identification number.

(b) Each importer will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of bushels or tons of sorghum imported;

(2) Number of bushels or tons of imported sorghum on which an assessment was paid;

(3) The amount of assessments remitted;

(4) Date that any assessments were paid;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market value; and

(6) The importer's tax identification number.

§ 1221.125 Books and records.

(a) Each first handler, producer, or importer subject to this subpart shall maintain and make available during normal business hours for inspection By employees or agents of the Board or the Secretary such books and records as are necessary to carry out the provisions of this part, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Each first handler responsible for collecting assessments pursuant to this subpart is required to give the producer from whom the assessment was collected, written evidence of payment of the assessment paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the first handler,

(2) Name of producer who paid the assessment,

(3) Total number of bushels or tons of sorghum on which the assessment was paid,

(4) Total assessment paid by the producer,

(5) Date on which assessments were paid, and

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

§ 1221.126 Use of information.

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

§ 1221.127 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board representatives, first handlers, producers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected there from, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

QUALIFICATION OF SORGHUM PRODUCER ORGANIZATIONS

§ 1221.128 Qualification.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to §1221.112(h). Only one sorghum producer organization per State may be qualified.

(b) State-legislated sorghum promotion, research, and information organizations may request qualification and will be considered first for qualification by the Secretary.

(c) If a State-legislated sorghum promotion, research, and information organization does not elect to seek qualification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any State sorghum producer organization whose primary purpose is to represent sorghum producers within a State, or any other State organization that has sorghum producers as part of its membership, may request qualification.

(d) Qualification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

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

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum-producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

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

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

(5) Sources from which the organizations operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(e) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its qualification to submit requests for funding to the Board. Any sorghum producer organization found eligible by the Secretary under this section will be qualified by the Secretary, and the Secretary's determination as to eligibility shall be final.

[73 FR 25407, May 6, 2008, as amended at 83 FR 35106, July 25, 2018]

§ 1221.128 Qualification.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to §1221.112(h). Only one sorghum producer organization per State may be qualified.

[83 FR 35106, July 25, 2018]

MISCELLANEOUS

§ 1221.129 Right of the Secretary.

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

§ 1221.130 Referenda.

(a) For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under §1221.116 who, during a representative period determined by the Secretary, have engaged in the production or importation of sorghum.

(1) The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) This part will be approved in a referendum if a majority of those persons voting vote for approval.

(b) The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board; or

(3) At the request of 10 percent or more of the sorghum producers and importers eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by sorghum producers and importers eligible to vote.

(d) The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1221.131 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate

the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of sorghum.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1221.132 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons, title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, by qualified organizations pursuant to § 1221.128 in the interest of continuing sorghum promotion, research, and information programs.

§ 1221.133 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other persons with respect to any such violation.

§ 1221.134 Personal liability.

No representative or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such representative or employee, except for acts of dishonesty or willful misconduct.

§ 1221.135 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1221.136 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1221.137 Rules and regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

§ 1221.138 OMB control number.

The control number assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0246.

Subpart B—Procedures for the Conduct of Referenda

SOURCE: 75 FR 70575, November 18, 2010, unless otherwise noted.

DEFINITIONS

§ 1221.200 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1221.201 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1221.202 Administrator, FSA.

Administrator, FSA, means the Administrator of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1221.203 Eligible person.

Eligible person is defined as any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum. Such persons are eligible to participate in the referendum.

§ 1221.204 Farm Service Agency.

Farm Service Agency, also referred to as ''FSA,'' means the Farm Service Agency of USDA.

§ 1221.205 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1221.206 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1221.207 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1221.208 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

§ 1221.209 Public notice.

Public notice means not later than 30 days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting

procedures established under section 518 of the Act.

§ 1221.210 Representative period.

Representative period means the period designated by the Secretary pursuant to section 518 of the Act.

§ 1221.211 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting in the referendum.

PROCEDURES

§ 1221.220 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices for producers and through AMS headquarters offices for importers.

(b) The Secretary shall determine if at least a majority of those persons voting favor the continuance of this part.

§ 1221.221 Supervision of the process for conducting referenda.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

§ 1221.222 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum is eligible to participate in the referendum. An eligible person at the time of the referendum and during the representative period, shall be entitled to cast only one vote in the referendum.

(b) *Proxy registration*. Proxy registration is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer or importer entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.*, spouse, family members, sharecrop lease, joint tenants, tenants in common, owners of community property, a partnership, or a corporation).

(c) Any individual, who votes on behalf of any producer or importer entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA or AMS office, the person voting may be required to submit adequate evidence of such authority.

(d) *Joint and group interest*. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production or importation of sorghum during the representative period as a producer or importer entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

§ 1221.223 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA or AMS office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site.

(c) Each eligible producer shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business.

(d) Each eligible importer will cast a ballot in the Marketing Programs

Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone: (202) 720–1115; Fax: (202) 720–1125.

§ 1221.224 Facilities.

Each county FSA office will provide:

(a) A voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit a ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

§ 1221.225 Certification and referendum ballot form.

Form LS–379 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote ''yes'' or ''no'' to continue the program and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production of sorghum during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production of sorghum during the representative period.

§ 1221.226 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete Form LS–379 in its entirety, sign it and, provide evidence that they were engaged in the production or importation of sorghum during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county and, telephone number. The person shall sign and certify on Form LS–379 that:

(i) The person was engaged in the production or importation of sorghum during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(2) Only a completed and signed Form LS–379 accompanied by supporting documentation showing that the person was engaged in the production or importation of sorghum during the representative period shall be considered a valid vote.

(b) To vote, eligible producers may obtain Form LS–379 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed Form LS–379 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business. A completed and signed Form LS–379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period. To vote, eligible importers may obtain Form LS–379 in-person, by mail or, by facsimile from AMS offices or through the Internet during the voting period. A completed and signed Form LS–379 and supporting documentation, such as a U.S. Customs and Border Protection form 7501, must be returned to the AMS headquarters office.

(c) A completed and signed Form LS–379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office for producers and to AMS office for importers. Form LS–379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office for producers or the AMS office for importers prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office for producers and the AMS office for importers on the 5th business day following the final day of the voting period.

(d) Persons who obtain Form LS–379 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation. Importers who obtain Form LS–379 in-person at the appropriate AMS office may complete and return it the same day along with the supporting documentation.

§ 1221.227 Canvassing voting ballots.

(a) Canvassing of Form LS–379 shall take place at the appropriate county FSA offices or AMS office on the 6th business day following the final day of the voting period. Canvassing of producer ballots shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Canvassing of importer ballots will be performed by AMS personnel or any other person as deemed necessary.

(c) Form LS–379 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA or AMS to vote by completing Form LS–379 in its entirety, signing it, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production or importation of sorghum. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA or AMS cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA or AMS shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(d) *Appeal.* A person declared to be ineligible by FSA or AMS can appeal such decision and provide additional documentation to the FSA county office or AMS within 5 business days after the postmark date of the letter of notification of ineligibility. FSA or AMS will then make a final decision on the person's eligibility and notify the person of the decision.

(e) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS–379 is not signed or all required information has not been provided;

(2) Form LS–379 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS–379 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS–379 and supporting documentation returned by mail was not received in the county FSA or AMS office by the 5th business day following the final day of the voting period;

(5) Form LS–379 or supporting documentation is mutilated or marked in such a way that any required information on the Form is illegible; or

(6) Form LS–379 and supporting documentation not returned to the appropriate county FSA or AMS office.

§ 1221.228 Counting ballots.

(a) Form LS–379 shall be counted by county FSA offices or the AMS office on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Number of invalid ballots.

§ 1221.229 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than the 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1221.230 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1221.231 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official results on its Web site. State reports and related papers shall be available for public inspection upon request during normal business hours at the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1221.232 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Sorghum Checkoff Program Referendum,'' all of the Forms LS–379 along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1221.233 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

§ 1221.234 Confidentiality

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

Subparts C–E [Reserved]

PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

Subpart A—Paper and Paper-Based Packaging Promotion, Research and Information Order

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1222.520 Late payment and interest charges for past due assessments.

AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 78 FR 56820, Sept. 16, 2013, unless otherwise noted.

Subpart A—Paper and Paper-Based Packaging Promotion, Research and Information Order

SOURCE: 79 FR 3706, Jan. 22, 2014, unless otherwise noted.

DEFINITIONS

§ 1222.1 Act.

Act means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1222.2 Board.

Board means the Paper and Packaging Board established pursuant to § 1222.40, or such other name as recommended by the Board and approved by the Department.

[80 FR 80209, Dec. 24, 2015]

§ 1222.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1222.4 Converted products.

Converted products means products made from paper and paper-based packaging.

§ 1222.5 Customs or CBP.

Customs or CBP means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

§ 1222.6 Department or USDA.

Department or USDA means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1222.7 Fiscal period and marketing year.

Fiscal period and marketing year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

§ 1222.8 Importer.

Importer means any person who imports paper and paper-based packaging from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who manufactures paper and paper-based packaging outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such paper and paper-based packaging.

§ 1222.9 Information.

Information means information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging, increase efficiency in manufacturing paper and paper-based packaging, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(a) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding paper and paper-based packaging; and

(b) Industry information, which means information and programs that would enhance the image of the paper and paper-based packaging industry.

§ 1222.10 Kraft process.

Kraft process means a process that transforms wood into a high quality strong pulp for making paper and paper-based packaging.

§ 1222.11 Linerboard.

Linerboard means a grade of containerboard that is used as facing material in the manufacture of corrugated or solid fiber shipping boxes.

§ 1222.12 Manufacture or produce.

Manufacture or produce means the process of transforming pulp into paper and paper-based packaging.

§ 1222.13 Manufacturer or producer.

Manufacturer or producer means any person who manufactures paper and paper-based packaging in the United States.

§ 1222.14 Medium.

Medium means a grade of containerboard used as the inner fluting material in the manufacture of corrugated or solid fiber shipping boxes.

§ 1222.15 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1222.16 Panel.

Panel means the Paper and Paper-Based Packaging Panel formed to pursue development of a paper and paper-based packaging promotion, research and information program.

§ 1222.17 Paper and paper-based packaging.

(a) *Paper and paper-based packaging* means:

(1) Printing, writing and related paper, which is coated or uncoated paper that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. For purposes of this Order, printing, writing and related paper includes thermal paper but does not include carbonless paper;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

(b) For purposes of this Order, paper and paper-based packaging does not include tissue paper, newsprint or converted products.

§ 1222.18 Part and subpart.

Part means the Paper and Paper-Based Packaging Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1222.19 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1222.20 Programs, plans and projects.

Programs, plans and projects means those research, promotion and information programs, plans or projects established pursuant to the Order.

§ 1222.21 Promotion.

Promotion means any action, including paid advertising and the dissemination of information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging.

§ 1222.22 Pulp.

Pulp means the material that is produced by chemically or mechanically separating cellulose fibers from wood or recycling recovered fiber.

§ 1222.23 Research.

Research means any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, manufacturing, recyclability, reusability or quality of paper and

paper-based packaging, including research directed to product characteristics and product development, including new uses of existing products, new products or improved technology in the manufacturing of paper and paper-based packaging.

§ 1222.24 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1222.25 Short ton or ton.

Short ton or ton means a measure of weight equal to 2,000 pounds.

§ 1222.26 State.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1222.27 Suspend.

Suspend means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1222.28 Terminate.

Terminate means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1222.29 United States.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

PAPER AND PACKAGING BOARD

§ 1222.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Paper and Packaging Board to administer the terms and provisions of this Order. The Board shall be composed of manufacturers and importers of paper and paper-based packaging that manufacture or import 100,000 short tons or more of paper and paper-based packaging during a marketing year. Seats on the Board shall be apportioned as set forth in paragraph (b) of this section based on the geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States.

(b) *Composition of Board.* The 2020 Board shall be composed of 10 members. The 2021 Board shall be composed of 9 members. The 2022 Board and each subsequent Board shall be composed of 8 members. The Boards shall be established as follows:

(1) *Manufacturers.* For the 2020 Board, 9 members shall be manufacturers. For the 2021 Board, 8 members shall be manufacturers, and for the 2022 Board and each subsequent Board, 7 members shall be manufacturers, from the following two regions:

(i) Five members shall be from the South for the 2020 Board, five members shall be from the South for the 2021 Board, and four members shall be from the South for the 2022 Board and each subsequent Board. The South shall consist of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

(ii) Four members shall be from all other parts of the United States for the 2020 Board, and three members shall be from all other parts of the United States for the 2021 Board and each subsequent Board. All other parts of the United States consist of those states not listed in paragraph (b)(1)(i) of this section.

(2) *Importers.* One member shall be an importer.

(c) At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States and the quantity of paper and paper-based packaging imported to the United States. The review will be conducted using the

Board's annual assessment receipts and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership or size of the Board be adjusted to reflect changes in geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

[78 FR 56820, Sept. 16, 2013, as amended at 80 FR 80209, Dec. 24, 2015; 84 FR 31462, July 2, 2019]

§ 1222.41 Nominations and appointments.

(a) Nominees must manufacture or import 100,000 short tons or more of paper and paper-based packaging in a marketing year.

(b) Initial nominations shall be submitted to the Secretary by the Panel. Before considering any nominations, the Panel shall publicize the nomination process, using trade press or other means it deems appropriate, and shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year to generate nominees that reflect the range of operations within the paper and paper-based packaging industry. The Panel may use regional caucuses, mail or other methods to elicit potential nominees. The Panel shall work with USDA to ensure that all eligible candidates are aware of the opportunity to serve on the Board. The Panel shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in §1222.40(b). The Secretary shall select the initial members of the Board from the nominations submitted by the Panel.

(c) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year. Manufacturers and importers may submit nominations to the Board;

(2) Manufacturer and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees may seek nomination to the Board for all vacant seats for which the nominees are qualified;

(4) For domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in both regions may seek nomination in one region of their choice. The Board will issue the call for nominations to all known manufacturers and recommend nominees for each open seat and the additional nominees to the Secretary;

(5) Nominees that are both a manufacturer and an importer may seek nomination to the board as either a manufacturer or importer so long as they meet the qualifications. The Board will issue the call for nominations to all known importers and recommend nominees for each open seat and the additional nominees to the Secretary;

(6) The Board will evaluate all the nominees and recommend at least two names for each open seat. Other qualified persons interested in serving in the open seats, but not recommended by the Board, will be designated by the Board as additional nominees for consideration by the Secretary;

(7) The Board must submit nominations to the Secretary at least six months before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board;

(8) Any manufacturer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(9) From the nominations made pursuant to this section, the Secretary shall appoint members of the Board on the basis of representation provided in §1222.40(b);

(10) No two members shall be employed by a single corporation, company, partnership or any other legal entity; and,

(11) The Board may recommend to the Secretary modifications to its

nomination procedures as it deems appropriate. Any such modification shall be implemented through rulemaking by the Secretary.

[79 FR 3706, Jan. 22, 2014, as amended at 84 FR 31462, July 2, 2019]

§ 1222.42 Term of office.

(a) With the exception of the initial Board, each Board member shall serve for a term of three years or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two full consecutive three-year terms, except as provided in paragraph (b) of this section.

(b) For the initial Board, the terms of the Board members shall be staggered for two, three and four years. Determination of which of the initial members shall serve a term of two, three or four years shall be recommended to the Secretary by the Panel.

§ 1222.43 Removal and vacancies.

(a) The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct. If the Secretary determines that any person appointed under this subpart consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(b) If a member resigns, is removed from office, or in the event of death of any member or if any member of the Board ceases to work for or be affiliated with a manufacturer or importer, or if a manufacturer ceases to do business in the region he or she represents, such position shall become vacant.

(c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the nominations process set forth in this Order or the Board may recommend to the Secretary that he or she appoint a successor from the most recent list of nominations for the position.

(d) A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1222.44 Procedure.

(a) A majority of the Board members shall constitute a quorum.

(b) Each member of the Board shall be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by two-thirds of the total number of Board members.

(c) At an assembled meeting, all votes shall be cast in person.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(e) There shall be no proxy voting.

§ 1222.45 Reimbursement and attendance.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1222.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of

the Board, and such rules and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate. The committee and subcommittees may include persons other than Board members, including representatives of Board members, as the Board deems necessary and appropriate, provided Board members or their representative constitute a majority of all committees and subcommittees;

(d) To employ or contract with persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(e) To notify manufacturers and importers of all Board meetings through a press release or other means and to give the Secretary the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(f) To develop and submit programs, plans and projects to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, plans and projects, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans or projects of promotion, research and information. The payment of costs for such activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(g) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance with §1222.50;

(h) To borrow funds necessary for startup expenses of the Order during the first year of operation by the Board;

(i) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(j) To recommend changes to the assessment rates as provided in this part;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(l) To periodically prepare and make public reports of program activities and, at least once each fiscal year, to make public an accounting of funds received and expended;

(m) To maintain such minutes, books and records and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(n) To act as an intermediary between the Secretary and any manufacturer or importer;

(o) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(p) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(q) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information and to carry out programs, plans, and projects designed to provide maximum benefits to the paper and paper-based packaging industry.

§ 1222.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false, misleading or disparaging to another agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

EXPENSES AND ASSESSMENTS

§ 1222.50 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, except for the initial budget;

(3) A summary of proposed expenditures for each program, plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Order.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan or project to another. Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources with approval of the Secretary for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) For fiscal years beginning three years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 percent of the assessment and other income received by and available to

the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in any reserve so established: *Provided*, That, the funds in the reserve do not exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1222.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within 90 calendar days after the end of the fiscal year to which it applies.

§ 1222.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers and importers, other income of the Board, and other funds available to the Board.

(b) Subject to the exemptions specified in § 1222.53, each manufacturer and importer shall pay an assessment to the Board in the amount of 35 cents per short ton or its equivalent manufactured and imported. The assessment shall be on the roll of paper and paper-based packaging manufactured or imported, except that the assessment for cut-size printing and writing paper imported or made by domestic manufacturers prior to leaving the manufacturer's mill shall be on the cut-size paper.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the Board, a change in the assessment rate. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) Domestic manufacturers shall remit to the Board the amount due no later than the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured.

(e) Each importer of paper and paper-based packaging shall pay through Customs to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the following table. In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the paper and paper-based packaging involved, assessments will continue to be collected based on the new number.

TABLE 1 TO § 1222.52(e)

Paper and paper-based packaging	Assessment $/kg
4802.54.1000	$0.000386
4802.54.3100	0.000386
4802.54.5000	0.000386
4802.54.6100	0.000386
4802.55.1000	0.000386

TABLE 1 TO § 1222.52(e)—Continued

Paper and paper-based packaging	Assessment $/kg
4802.55.2000	0.000386
4802.55.4000	0.000386
4802.55.6000	0.000386
4802.55.7020	0.000386
4802.55.7040	0.000386
4802.56.1000	0.000386
4802.56.2000	0.000386
4802.56.4000	0.000386
4802.56.6000	0.000386
4802.56.7020	0.000386
4802.56.7050	0.000386
4802.56.7090	0.000386
4802.57.1000	0.000386
4802.57.2000	0.000386
4802.57.4000	0.000386
4802.57.4020	0.000386
4802.57.4040	0.000386
4802.57.4090	0.000386
4802.58.1000	0.000386
4802.58.2020	0.000386
4802.58.2040	0.000386
4802.58.2080	0.000386
4802.58.5000	0.000386
4802.58.6020	0.000386
4802.58.6040	0.000386
4802.61.1000	0.000386
4802.61.2000	0.000386
4802.61.3110	0.000386
4802.61.3135	0.000386
4802.61.3191	0.000386
4802.61.5000	0.000386
4802.61.6020	0.000386
4802.61.6040	0.000386
4802.62.1000	0.000386
4802.62.2000	0.000386
4802.62.3000	0.000386
4802.62.5000	0.000386
4802.62.6120	0.000386
4802.62.6140	0.000386
4802.69.1000	0.000386
4802.69.2000	0.000386
4802.69.3000	0.000386
4804.11.0000	0.000386
4804.19.0000	0.000386
4804.21.0000	0.000386
4804.29.0000	0.000386
4804.31.4020	0.000386
4804.31.4040	0.000386
4804.31.6000	0.000386
4804.39.4020	0.000386
4804.39.4049	0.000386
4804.39.6020	0.000386
4804.39.6040	0.000386
4804.41.2000	0.000386
4804.41.4000	0.000386
4804.42.0010	0.000386
4804.42.0020	0.000386
4804.42.0030	0.000386
4804.42.0040	0.000386
4804.42.0050	0.000386
4804.49.0000	0.000386
4804.51.0000	0.000386
4804.52.0010	0.000386
4804.52.0020	0.000386
4804.52.0030	0.000386
4804.52.0040	0.000386
4804.52.0050	0.000386
4804.59.0000	0.000386
4805.11.0000	0.000386
4805.12.1000	0.000386
4805.12.2000	0.000386

TABLE 1 TO § 1222.52(e)—Continued

Paper and paper-based packaging	Assessment $/kg
4805.19.1000	0.000386
4805.19.2000	0.000386
4805.24.5000	0.000386
4805.24.7000	0.000386
4805.24.9000	0.000386
4805.25.0000	0.000386
4805.91.1010	0.000386
4805.91.9000	0.000386
4805.92.4010	0.000386
4805.92.4030	0.000386
4805.93.4010	0.000386
4805.93.4030	0.000386
4805.93.4050	0.000386
4805.93.4060	0.000386
4807.00.9100	0.000386
4807.00.9400	0.000386
4810.13.1120	0.000386
4810.13.1140	0.000386
4810.13.1900	0.000386
4810.13.2010	0.000386
4810.13.2090	0.000386
4810.13.5000	0.000386
4810.13.6000	0.000386
4810.13.7020	0.000386
4810.13.7040	0.000386
4810.14.1120	0.000386
4810.14.1140	0.000386
4810.14.1900	0.000386
4810.14.2010	0.000386
4810.14.2090	0.000386
4810.14.5000	0.000386
4810.14.6000	0.000386
4810.14.7020	0.000386
4810.14.7040	0.000386
4810.19.1100	0.000386
4810.19.1900	0.000386
4810.19.2010	0.000386
4810.19.2090	0.000386
4810.22.1000	0.000386
4810.22.5044	0.000386
4810.22.5080	0.000386
4810.22.6000	0.000386
4810.22.7020	0.000386
4810.22.7040	0.000386
4810.29.1025	0.000386
4810.29.1035	0.000386
4810.29.5000	0.000386
4810.29.6000	0.000386
4810.29.7020	0.000386
4810.29.7025	0.000386
4810.29.7035	0.000386
4810.31.1020	0.000386
4810.31.1040	0.000386
4810.31.3000	0.000386
4810.31.6500	0.000386
4810.32.1020	0.000386
4810.32.1040	0.000386
4810.32.1060	0.000386
4810.32.3000	0.000386
4810.32.6500	0.000386
4810.39.1200	0.000386
4810.39.1400	0.000386
4810.39.3000	0.000386
4810.39.6500	0.000386
4810.92.1225	0.000386
4810.92.1235	0.000386
4810.92.6525	0.000386
4810.92.6535	0.000386
4810.99.1050	0.000386
4810.99.6500	0.000386
4811.51.2010	0.000386

TABLE 1 TO § 1222.52(e)—Continued

Paper and paper-based packaging	Assessment $/kg
4811.51.2020	0.000386
4811.51.2030	0.000386
4811.59.4020	0.000386
4811.90.8030	0.000386

(f) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

(g) When a manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may accept advance payment of assessments from any manufacturer or importer that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(i) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

[79 FR 3706, Jan. 22, 2014, as amended at 88 FR 14485, Mar. 9, 2023]

§ 1222.53 Exemption from assessment.

(a) *Minimum quantity exemption.* (1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the marketing year. This is an annual exemption and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) Importers that import into the United States less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. This is an annual exemption and importers must qualify each year.

(i) Importers that imported less than 100,000 short tons of paper and paper-based packaging during the prior marketing year shall automatically be considered exempt during the upcoming marketing year. Customs data will be reviewed to verify applicable importers.

(ii) Importers that imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, but believe and can document that they will import less than 100,000 short tons of paper and paper-based packaging during the upcoming marketing year, may apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. Such importers shall certify that they will import less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past import data and other documentation to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible importer. It is the responsibility of the importer to retain a copy of the certificate of exemption.

(iii) The Board shall refund such importers considered exempt their assessments as collected by Customs no later

than 60 calendar days after receipt of such assessments by the Board. The Board will stop refund of assessments to such importers who during the marketing year import more than 100,000 short tons of paper and paper based packaging. These importers will be notified accordingly. No interest shall be paid on the assessments collected by Customs or the Board.

(3) Manufacturers that did not apply to the Board for an exemption and that manufactured less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the marketing year. Board staff shall determine the assessments paid and refund the amount due to the manufacturer accordingly.

(4) Importers that did not apply to the Board for an exemption, imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, and that imported less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the marketing year.

(5) If an entity is a manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year shall count towards the 100,000 short ton-exemption.

(6) Manufacturers and importers that received an exemption certificate or an automatic exemption from the Board but manufactured or imported 100,000 short tons or more of paper and paper-based packaging during the marketing year shall pay the Board the applicable assessments owed on the quantity manufactured or imported within 30 calendar days after the end of the marketing year and submit any necessary reports to the Board pursuant to §1222.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Organic.* (1) A manufacturer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports paper and paper-based packaging that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' paper and paper-based packaging on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (b)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (b)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

[79 FR 3706, Jan. 22, 2014, as amended at 80 FR 82032, Dec. 31, 2015]

PROMOTION, RESEARCH AND INFORMATION

§ 1222.60 Programs, plans and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans and projects authorized by this subpart. Such programs, plans and projects shall provide for promotion, research, information and other activities including consumer and industry information and advertising.

(b) No program, plan or project shall be implemented prior to its approval by the Secretary. Once a program, plan or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each program, plan and project authorized under this subpart to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board finds that a program, plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan or project.

§ 1222.61 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic

independent evaluation conducted under this section.

§ 1222.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1222.83 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1222.70 Reports.

(a) Manufacturers and importers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) For manufacturers:

(i) The name, address and telephone number of the manufacturer; and

(ii) The quantity of paper and paper-based packaging manufactured by type.

(2) For importers:

(i) The name, address and telephone number of the importer;

(ii) The quantity of paper and paper-based packaging imported by type; and

(iii) The country of export.

(b) For manufacturers, such information shall be reported to the Board no later than the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured and shall accompany the collected payment of assessments as specified in §1222.52. First quarter data (January–March) shall be reported to the Board no later than the 30th calendar day of April; second quarter data (April–June) shall be reported no later than the 30th calendar day of July; third quarter data (July–September) shall be reported no later than the 30th calendar day of October; and fourth quarter data (October–December) shall be reported no later than the 30th calendar day of January of the following marketing year.

(c) For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported specified in §1222.52.

§ 1222.71 Books and records.

Each manufacturer and importer shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Manufacturers and importers must maintain the books and records for two years beyond the fiscal year to which they apply.

§ 1222.72 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers and importers. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to

which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

MISCELLANEOUS

§ 1222.80 Right of the Secretary.

All fiscal matters, programs, plans or projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1222.81 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging. A single entity who domestically manufactures and imports paper and paper-based packaging may cast one vote in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether manufacturers and importers favor the amendment, continuation, suspension, or termination of the Order;

(2) Not later than seven years after this Order becomes effective and every seven years thereafter, to determine whether manufacturers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

§ 1222.82 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1222.83 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such person or person as the Secretary directs; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more paper and paper-based packaging organizations in the United States whose mission is generic promotion, research, and information programs.

§ 1222.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1222.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1222.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1222.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Secretary.

§ 1222.88 OMB control number.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 (Board nominee background statement) and OMB control number 0581–0093.

[84 FR 31462, July 2, 2019]

Subpart B—Referendum Procedures

§ 1222.100 General.

Referenda to determine whether eligible domestic manufacturers and importers favor the issuance, continuance, amendment, suspension, or termination of the Paper and Paper-Based Packaging Promotion, Research and Information Order shall be conducted in accordance with this subpart.

§ 1222.101 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Converted products* means products made from paper and paper-based packaging.

(c) *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

(d) *Department* or *USDA* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(e) *Eligible domestic manufacturer or producer* means any person who is currently a domestic manufacturer or producer and who manufactured 100,000 short tons or more of paper and paper-based packaging during the representative period.

(f) *Eligible importer* means any person who is currently an importer and who imported 100,000 short tons or more of paper and paper-based packaging into the United States during the representative period as a principal or as an agent, broker, or consignee of any person who manufactured paper and paper-based packaging outside of the United States for sale in the United States, and who is listed as the importer of record for such paper and paper-based packaging. Importation occurs when paper and paper-based packaging manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured paper and paper-based packaging immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of paper and paper-based packaging from Customs when such paper and paper-based packaging is entered or withdrawn for use in the United States.

(g) *Kraft process* means a process that transforms wood into a high quality strong pulp for making paper and paper-based packaging.

(h) *Linerboard* means a grade of containerboard that is used as facing material in the manufacture of corrugated or solid fiber shipping boxes.

(i) *Manufacture or produce* means the process of transforming pulp into paper and paper-based packaging.

(j) *Order* means the Paper and Paper-Based Packaging Promotion, Research and Information Order.

(k) *Paper and paper-based packaging* means:

(1) Printing, writing and related paper, which is coated or uncoated paper that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. For purposes of this Order, printing, writing and related paper includes thermal paper but does not include carbonless paper;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging,

tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

(5) For purposes of this Order, paper and paper-based packaging does not include tissue paper, newsprint or converted products.

(l) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a paper and paper-based packaging manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the manufacturing or importation of paper and paper-based packaging and the authority to transfer title to the paper and paper-based packaging so manufactured or imported.

(m) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(n) *Representative period* means the period designated by the Department.

(o) *Short ton or ton* means a measure of weight equal to 2,000 pounds.

(p) *United States* means collectively the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1222.102 Voting.

(a) Each eligible domestic manufacturer and importer of paper and paper-based packaging shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture paper and paper-based manufacturing, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate manufacturer or importer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who manufactures and imports paper and paper-based manufacturing may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1222.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the

dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible domestic manufacturers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1222.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1222.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1222.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1222.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1222.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581–0093.

[84 FR 31462, July 2, 2019]

Subpart C—Provisions Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order

SOURCE: 80 FR 80209, Dec. 24, 2015, unless otherwise noted.

§ 1222.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment shall be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1223—PECAN PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Pecan Promotion, Research, and Information Order

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Subpart C—Administrative Provisions

1223.520 Late payment and interest charges for past due assessments.

AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 86 FR 2898, Jan. 13, 2021, unless otherwise noted.

Subpart A—Pecan Promotion, Research, and Information Order

DEFINITIONS

§ 1223.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1223.2 American Pecan Council.

American Pecan Council or *APC* means that governing body of the Federal Marketing Order established pursuant to 7 CFR part 986 unless otherwise noted.

§ 1223.3 American Pecan Promotion Board.

American Pecan Promotion Board or the *Board* means the administrative body established pursuant to § 1223.40.

§ 1223.4 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract

with, the Board for anything of economic value.

§ 1223.5 Customs or CDP.

Customs or *CBP* means Customs and Border Protection, an agency of the United States Department of Homeland Security.

§ 1223.6 Department or USDA.

Department or *USDA* means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1223.7 First handler.

First handler means any person who receives, shells, cracks, accumulates, warehouses, roasts, packs, sells, consigns, transports, exports, or ships (except as a common or contract carrier of pecans owned by another person), or in any other way puts inshell or shelled pecans in the stream of commerce. The term first handler includes a producer who handles or markets pecans of the producer's own production.

§ 1223.8 Fiscal period.

Fiscal period means October 1 to September 30, or such other period as recommended by the Board and approved by the Secretary.

§ 1223.9 Importer.

Importer means any person who imports pecans into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles pecans outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such pecans.

§ 1223.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of pecans on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of pecans; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the pecan industry, and activities to enhance the image of the pecan industry.

§ 1223.11 Inshell pecans.

Inshell pecans are nuts whose kernel is maintained inside the shell.

§ 1223.12 Market or marketing.

(a) *Marketing* means the sale or other disposition of pecans in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of pecans in interstate, foreign, or intrastate commerce.

§ 1223.13 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1223.14 Part and subpart.

This *part* is comprised of all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Pecan Promotion, Research, and Information Order comprises *subpart A* of this part.

§ 1223.15 Pecans.

Pecans means and includes any and all varieties or subvarieties, inshell or shelled, of *Carya illinoinensis* grown or imported into the United States.

§ 1223.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1223.17 Producer.

Producer is synonymous with grower and means any person engaged in the production and sale of pecans in the United States who owns, or who shares

in the ownership and risk of loss of such pecans.

§ 1223.18 Programs, plans, and projects.

Programs, plans, and projects mean those research, promotion, and information programs, plans, or projects established pursuant to this subpart.

§ 1223.19 Promotion.

Promotion means any action taken to present a favorable image of pecans to the general public and the food industry for the purpose of improving the competitive position of pecans both in the United States and abroad and stimulating the sale of pecans. This includes paid advertising and public relations.

§ 1223.20 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of pecans, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of pecans.

§ 1223.21 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1223.22 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. One pound of shelled pecans is the equivalent of two pounds inshell pecans.

§ 1223.23 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1223.24 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1223.25 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

AMERICAN PECAN PROMOTION BOARD

§ 1223.40 Establishment and membership.

(a) *Establishment of the American Pecan Promotion Board*. There is hereby established an American Pecan Promotion Board, called the Board in this part, comprised of seventeen (17) members, appointed by the Secretary from nominations as follows:

(1) Ten (10) producer members: Three (3) each from the Eastern Region and Central Region and four (4) from the Western Region as follows:

(i) Eastern Region shall mean the States of Alabama, Florida, Georgia, North Carolina, South Carolina plus any states in the United States, the majority of whose land mass is in the Eastern Time Zone, plus any U.S. territories in the Atlantic Ocean;

(ii) Central Region shall mean the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas plus any states in the United States, the majority of whose land mass is in the Central Time Zone; and

(iii) Western Region shall mean the States of Arizona, California, New Mexico plus any states in the United States, the majority of whose land mass is in the Mountain or Pacific Time Zones, plus Alaska and Hawaii and any U.S. territories in the Pacific Ocean.

(2) Seven (7) importers.

(b) *Adjustment of membership*. At least once every five years, the Board will review the geographical distribution of United States production of pecans and the quantity or value of imports. The review will be conducted through an audit of state crop production and Customs figures and Board assessment

records. If warranted, the Board will recommend to the Secretary that the membership on the Board be altered to reflect any changes in the geographical distribution of domestic pecan production and the quantity or value of imports. If the level of imports fluctuates versus domestic pecan production, importer members may be added to or reduced from the Board.

(c) *Board's ability to serve the diversity of the industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Board take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

§ 1223.41 Nominations and appointments.

(a) Initial nominations for producers will be submitted to the Secretary by the American Pecan Council (APC), or the Department if appropriate. Before considering any nominations, the APC shall publicize the nomination process, using trade press or other means it deems appropriate, to reach out to all known producers for the U.S. market. The APC may use regional caucuses, mail or other methods to elicit potential nominees. The APC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in paragraph (a)(1) of §1223.40. The Department will conduct initial nominations for the importer members. The Secretary shall appoint the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) Nomination of producer members will be conducted by the Board. The Board staff will seek nominations for each vacant producer seat from each region from producers who have paid their assessments to the Board in the most recent fiscal period and who produced more than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which nominations are being conducted and the previous three fiscal periods). Producers who produce pecans in more than one region may seek nomination only in the region in which they produce the majority of their pecans. Nominations will be submitted to the Board office and placed on a ballot that will be sent to producers in each region for a vote. Producers may only vote in the region in which they produce the majority of their pecans. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. Two candidates for each position shall be submitted to the Secretary; and

(2) Nomination of importer members will be conducted by the Board. All qualified national organizations representing importer interests will have the opportunity to nominate members to serve on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period and imported more than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which nominations are being conducted and the previous three fiscal periods) may submit nominations. The names of importer nominees shall be placed on a ballot and mailed to importers for a vote. The votes shall be tabulated with the nominee receiving the highest number of votes at the top of the list in descending order by vote. Two candidates for each importer Board position shall be submitted to the Secretary. To be certified by the Secretary as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(i) The organization's voting membership must be comprised primarily of importers of pecans;

(ii) The organization has a history of stability and permanency and has been in existence for more than one year;

(iii) The organization must derive a portion of its operating funds from importers;

(iv) The organization must demonstrate it is willing and able to further the Act and Order's purposes; and

(v) To be certified by the Secretary as a qualified national organization representing importer interests, an organization must agree to take reasonable steps to publicize to non-members the availability of open Board importer positions.

(c) Producer and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board.

(d) Nominees must be in compliance with the applicable provisions of this subpart.

(e) The Board must submit nominations to the Secretary at least six months before the new Board term begins. The Secretary shall appoint the members of the Board.

(f) No two members shall be employed by a single corporation, company, partnership, or any other legal entity.

(g) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1223.42 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on October 1 and end on September 30. No member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be determined at random. Those members serving an initial term of two, three, or four years may serve one successive three-year term.

§ 1223.43 Vacancies.

(a) In the event that any member of the Board ceases to work for or be affiliated with the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

(c) Without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the continued failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(d) Should the position of a member become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in §§ 1223.40 and 1223.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1223.44 Procedure.

(a) At a Board meeting, it will be considered a quorum when a majority of members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings and appoint committee membership throughout that period.

(c) All Board and committee members will receive a minimum of 10 days advance notice of all Board and committee meetings, unless an emergency meeting is declared by the Chairperson.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may also consist of individuals other

than Board members and such individuals may vote in committee meetings. These committee members shall be appointed by the Chairperson and shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the Chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members and the Secretary must be notified, and all members must be provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The Chairperson shall be a voting member.

(i) The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1223.45 Compensation and reimbursement.

The members of the Board when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1223.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer this subpart, including activities authorized to be carried out under this subpart;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the Board members, or to enter into contracts, other than with Board members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons, or to determine the contractual terms of such parties;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise

uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with §1223.50;

(g) To invest assessments collected under this part in accordance with §1223.50;

(h) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(i) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(j) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(k) To act as intermediary between the Secretary and any producer, first handler, or importer;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(n) To recommend to the Secretary such amendments to this subpart as the Board considers appropriate; and

(o) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the pecan industry's position in the marketplace; maintain and expand existing markets and uses for pecans; and to carry out programs, plans, and projects designed to provide maximum benefits to the pecan industry.

§1223.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under this subpart to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to this subpart.

(c) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Pecans of all origins shall be treated equally.

EXPENSES AND ASSESSMENTS

§1223.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent

with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, for authorized activities.

(h) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of this subpart, including all referendum costs in connection with this subpart.

(i) For fiscal periods beginning three (3) or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal period. Reimbursements to the Secretary required under paragraph (h) of this section are excluded from this limitation on spending.

(j) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed the last two fiscal periods' budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(k) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1223.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Secretary on a monthly or quarterly basis or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§ 1223.52 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, other income of the Board, and other funds available to the Board including those collected pursuant to § 1223.57 and subject to the limitations contained in § 1223.57.

(b) Each producer shall pay an assessment per pound of pecans produced in

the United States. The collection of assessments on pecans produced in the United States will be the responsibility of the first handler receiving the pecans from producers. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(1) First handlers may remit assessments to a third-party collection agent under this subpart.

(2) First handlers may also remit assessments directly to the Board.

(c) Such assessments shall be levied at $0.02 per pound on all inshell pecans and $0.04 per pound on all shelled pecans. The assessment rate may be reviewed and modified with the approval of the Secretary. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) All assessment payments and reports will be submitted to the office of the Board. All assessment payments for a fiscal period are to be received no later than the 10th of the month following the end of the previous month. A late payment charge shall be imposed on any producer and importer who fails to remit to the Board, the total amount for which any such producer and importer is liable on or before the due date established by the Board on forms approved by the Secretary. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the producer and importer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(e) Each importer of pecans shall pay an assessment to the Board on pecans imported for marketing in the United States, through Customs.

(1) The assessment rate for imported pecans shall be the same or equivalent to the rate for pecans produced in the United States.

(2) The import assessment shall be uniformly applied to imported pecans that are identified by the number 0802.90.10.00 and 0802.90.15.00 in the Harmonized Tariff Schedule (HTS) of the United States or any other numbers used to identify pecans in that schedule.

(3) In the event that any HTS number is subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of pecans, assessment will continue to be collected based on the new numbers.

(4) The assessment due on imported pecans shall be paid when they enter, or are withdrawn from warehouse, for consumption in the United States.

(5) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board no later than the 10th of the month following the month the assessed pecans were imported into the United States.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1223.53 Exemption procedures.

(a) *De minimis.* An exemption from payment of assessments as provided in § 1223.52, shall be provided to producers that domestically produce and importers that import less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods) as follows:

(1) Any producer who desires to claim an exemption from assessments shall file an application on a form provided by the Board, for a certificate of exemption for each fiscal period claiming an exemption. Such producer shall certify that it will domestically produce less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods). It is the responsibility of the producer to retain a copy of the certificate of exemption.

(2) Any importer who desires to claim an exemption from assessments shall file an application on a form provided by the Board, for a certificate of exemption for each fiscal period claiming

an exemption. Such importer shall certify that it will import less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods). It is the responsibility of the importer to retain a copy of the certificate of exemption.

(3) On receipt of an exemption application, the Board shall determine whether an exemption may be granted for that fiscal period. The Board will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one covering that fiscal period. The Board may request persons applying for the exemption to provide supporting documentation, such as past sales receipts or import data.

(4) The Board, with the Secretary's approval, may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt pecans and, in the case of importers, proof of payment of assessments.

(5) The exemption will apply immediately following the issuance of the certificate of exemption.

(6) Producers and importers who received an exemption certificate from the Board but domestically produced or imported more than 50,000 pounds of inshell pecans (25,000 shelled of pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods) during the fiscal period shall pay the Board the applicable assessments owed and submit any necessary reports to the Board pursuant to § 1223.60.

(b) *Assessment refunds.* Importers and producers who are exempt from assessment shall be eligible for a refund of assessments collected, either by Customs or a first handler. Requests for such assessment refunds must be submitted to the Board within 90 days of the last day in the fiscal period when assessments were collected on such producer's or importer's pecans. No interest will be paid on such assessments. The Board shall refund such assessments no later than 60 calendar days after receipt by the Board of information justifying the exemption from assessment.

(c) *Organic.* (1) A producer who domestically produces pecans under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the fiscal period initially, and annually thereafter on or before the start of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports pecans that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' pecans on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of the Certificate of Exemption.

§ 1223.54 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to 10 percent of the assessments collected during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

(b) If the Order is not approved by the required referendum, the Board shall promptly pay refunds of assessments to all producers and importers that have paid assessments during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of all refunds that producers and importers subject to this subpart have a right to receive, the Board shall prorate the amount deposited in such account among all producers and importers who desire a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the results of the required referendum are announced by the Secretary. The producer and importer shall also submit documentation to substantiate that assessments were paid. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with the regulations in this part.

(e) If the Order is approved by the required referendum conducted under §1223.71 then:

(1) The escrow account shall be closed; and,

(2) The funds shall be available to the Board for disbursement under §1223.50.

PROMOTION, RESEARCH, AND INFORMATION

§1223.55 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to pecans; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of pecans, and the creation of new products thereof, to the end that the marketing and use of pecans may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of pecans.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

§1223.56 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§1223.57 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1223.73 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§1223.60 Reports.

(a) Each first handler, producer, or importer subject to this subpart shall be required to provide to the Board periodically such information as required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) First handler must report or producer acting as its own first handler:

(i) Number of pounds handled;

(ii) Number of pounds on which an assessment was collected;

(iii) Name, address and other contact information from whom the first handler has collected the assessments on each pound handled; and

(iv) Date collection was made on each pound handled.

(2) Unless provided by Customs, importer must report:

(i) Number of pounds imported;

(ii) Number of pounds on which an assessment was paid;

(iii) Name, address, and other contact information of the importer; and

(iv) Date assessment was paid on each pound imported.

(b) These reports shall accompany the payment of the collected assessments.

§ 1223.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least 3 years beyond the fiscal period of their applicability.

§ 1223.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements will not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1223.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1223.71 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this subpart favor the continuation, suspension, amendment, or termination of this subpart, the Secretary shall conduct a referendum among persons subject to assessments under § 1223.52 who, during a representative period determined by the Secretary, have engaged in the production or importation of pecans:

(1) The required referendum shall be conducted not later than 3 years after assessments first begin under the Order; and

(2) The Order will be approved in a referendum if a majority of producers and importers vote for approval in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether producers and importers favor the continuation, suspension, or termination of the Order;

(2) Every seven years the Secretary shall hold a referendum to determine whether producers and importers of pecans favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who have been engaged in the production or importation of pecans;

(3) At the request of the Board established in this subpart;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

§ 1223.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this part or subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production or importation of pecans.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1223.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such person's title and right to all funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the pecan producer organizations in the interest of continuing pecan promotion, research, and information programs.

§ 1223.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part, or the issuance of any amendment to this part, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1223.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1223.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1223.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1223.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–NEW, except for the Board nominee background statement form which is assigned OMB control number 0505–0001.

Subpart B—Referendum Procedures

§ 1223.100 General.

Referenda to determine whether eligible pecan producers and importers favor the issuance, amendment, suspension, or termination of the Pecan Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1223.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employees of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Eligible importer* means any person who, during the representative period, was subject to the Order and required to pay assessments on pecans imported into the United States.

(c) *Eligible producer* means any person who, during the representative period, was subject to the Order and required to pay assessments on pecans produced in the United States.

(d) *Order* means subpart A of this part, the Pecan Promotion, Research, and Information Order.

(e) *Pecans* means and includes any and all varieties or subvarieties, inshell and shelled, of *Carya illinoinensis* grown or imported into the United States.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this paragraph (f), the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a pecan farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary.

(i) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1223.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce pecans, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such person. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, overnight delivery, electronic mail, facsimile, or by other means as instructed by the Secretary.

§ 1223.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this section, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and eligible importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1223.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing the referendum agent's functions listed in this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1223.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if the agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1223.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1223.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Subpart C—Administrative Provisions

§ 1223.520 Late payment and interest charges for past due assessments.

(a) A late payment charge will be imposed on any producer, first handler or importer who fails to make timely remittance to the Board of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 5 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Pork Promotion, Research, and Consumer Information Order

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AUTHORITY: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

Subpart A—Pork Promotion, Research, and Consumer Information Order

SOURCE: 51 FR 31903, Sept. 5, 1986, unless otherwise noted.

DEFINITIONS

§ 1230.1 Act.

Act means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.2 Department.

Department means the United States Department of Agriculture.

§ 1230.3 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

Board means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

Consumer information means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

Council means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

Customs Service means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

Delegate Body means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

Imported means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

Imported pork and pork products means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

Importer means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

Market means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

Market value means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

Part means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a ''subpart of such part.

§ 1230.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

Plans and projects means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

Porcine animal means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

Pork means the flesh of a porcine animal.

§ 1230.20 Pork product.

Pork product means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

Producer means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

Promotion means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

Research means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

State means each of the 50 States.

§ 1230.25 State association.

State association means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

State where produced means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

NATIONAL PORK PRODUCERS DELEGATE BODY

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.31 Nomination and appointment of producer members.

(a) [Reserved]

(b) Delegate Body nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with §1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate

State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

NATIONAL PORK BOARD

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term

of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) of this section, if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented:

(1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and

(2) The budget, plans, or projects for which State associations are to receive funds under §1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to §1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under §1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities

carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

PROMOTION, RESEARCH, AND CONSUMER INFORMATION

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

EXPENSES AND ASSESSMENTS

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to §1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to §1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by

appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

(3) Each producer of porcine animals slaughtered for sale by the producer or sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(4) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the ''National Pork Board,'' which, together with the reports required by §1230.80, shall be sent to the address designated by the Board.

(5) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

[51 FR 31903, Sept. 5, 1986; 51 FR 36383, Oct. 10, 1986; 53 FR 1910, Jan. 25, 1988; 53 FR 30245, Aug. 11, 1988; 56 FR 6, Jan. 2, 1991]

§1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of

assessments received from producers in a State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988; 60 FR 33683, June 29, 1995]

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt

payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 [Reserved]

REPORTS, BOOKS, AND RECORDS

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under §1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the

Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, §1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851–0151.

Subpart B—Rules and Regulations

SOURCE: 53 FR 1911, Jan. 25, 1988, unless otherwise noted.

DEFINITIONS

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

§ 1230.102 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment to the Board.

(f) The person responsible for collecting and remitting the assessment to the Board shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as

long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' porcine animals or pork and pork products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

[70 FR 2760, Jan. 14, 2005, as amended at 80 FR 82023, Dec. 31, 2015]

ASSESSMENTS

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

TABLE 1 TO PARAGRAPH (a)

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.35 percent Customs Entered Value.
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.35 percent Customs Entered Value.
0103.91.0020	Weighing 7 kg or more but less than 23 kg each.	0.35 percent Customs Entered Value.
0103.91.0030	Weighing 23 kg or more but less than 50 kg each.	0.35 percent Customs Entered Value.
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.35 percent Customs Entered Value.
0103.92.0090	Other	0.35 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

TABLE 2 TO PARAGRAPH (b)

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	0.15	0.390920
0203.12.1010	Processed hams and cuts thereof, with bone in	0.15	0.390920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	0.15	0.390920
0203.12.9010	Other hams and cuts thereof, with bone in	0.15	0.390920
0203.12.9020	Other shoulders and cuts thereof, with bone in	0.15	0.390920
0203.19.2010	Processed spare ribs	0.18	0.457058
0203.19.2090	Processed other	0.18	0.457058
0203.19.4010	Bellies	0.15	0.390920
0203.19.4090	Other	0.15	0.390920
0203.21.0000	Frozen carcasses and half-carcasses	0.15	0.390920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in.	0.15	0.390920

TABLE 2 TO PARAGRAPH (b)—Continued

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in	0.15	0.390920
0203.29.2000	Frozen processed other	0.18	0.457058
0203.29.4000	Frozen other:	0.15	0.390920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:		
0206.30.0000	Of swine, fresh or chilled	0.15	0.390920
0206.41.0000	Of swine, frozen: Livers	0.15	0.390920
0206.49.0000	Of swine, frozen: Other:	0.15	0.390920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	0.15	0.390920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	0.15	0.390920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	0.15	0.390920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	0.15	0.390920
0210.19.0010	Meat of swine: Canadian style bacon	0.18	0.457058
0210.19.0090	Meat of Swine: Other	0.18	0.457058
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	0.23	0.567288
1601.00.2090	Pork other	0.23	0.567288
1602	Other prepared or preserved meat, meat offal or blood:		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg.	0.25	0.611380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers.	0.25	0.611380
1602.41.9000	Of swine: Other	0.15	0.390920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	0.25	0.611380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	0.25	0.611380
1602.42.4000	Of swine: Other shoulders and cuts thereof	0.15	0.390920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	0.23	0.567288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other.	0.18	0.457058
1602.49.9000	Of swine: Other, including mixtures: Other	0.18	0.457058

[87 FR 66538, Nov. 4, 2022]

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to § 1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling $25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling $25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled $25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

[56 FR 6, Jan. 2, 1991]

§ 1230.112 Rate of assessment.

In accordance with §1230.71(d), the rate of assessment shall be 0.35 percent of market value.

[87 FR 66539, Nov. 4, 2022]

§ 1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.

Pursuant to the provisions of §1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to §1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in §1230.111.

[65 FR 7283, Feb. 14, 2000]

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in §1230.25, that receive distributions of assessments pursuant to §1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of §1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

[60 FR 33683, June 29, 1995]

MISCELLANEOUS

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Subpart C [Reserved]

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§§ 1230.501–1230.512 [Reserved]

Subpart E—Procedures for the Conduct of Referendum

SOURCE: 65 FR 43508, July 13, 2000, unless otherwise noted.

DEFINITIONS

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

The term *Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.603 Administrator, FSA.

The term *Administrator, FSA,* means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1230.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee,* also referred to as the *FSA County Committee* or *COC,* means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED,* means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office or the person acting in such capacity.

§ 1230.608 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in § 1230.110 of the regulations.

§ 1230.609 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.610 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.611 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seedstock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.612 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1230.613 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.614 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.615 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.616 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.617 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and

importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.618 Representative period.

The term *Representative period* means the 12-consecutive months prior to the first day of absentee and importer voting in the referendum. The representative period for this referendum is August 18, 1999, through August 17, 2000.

§ 1230.619 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1230.620 State.

The term *State* means each of the 50 States.

§ 1230.621 Voting period.

The term *Voting period* means the 3-consecutive business day period for in-person voting.

REFERENDUM

§ 1230.622 General.

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff Program will be conducted in accordance with this subpart.

(b) The Pork Checkoff Program will be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum will be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, DC, for importers.

§ 1230.623 Supervision of referendum.

The Administrator, AMS, will be responsible for conducting the referendum in accordance with this subpart.

§ 1230.624 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual that owns and sells at least one hog or pig during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other entity that owns and sells at least one hog or pig during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs will be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she sells at least one hog or pig in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork, or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as an importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity must certify that he or she is authorized to take such action.

§ 1230.625 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 3-consecutive days on September 19, 20, 21, 2000. Eligible producers shall register and vote on-site following the procedures in 1230.628.

Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail, telephone, or facsimile, or pick up an absentee ballot in-person. The absentee voting period shall be from August 18, 2000, through September 21, 2000.

(b) Importers. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, DC, between August 18, 2000, through September 21, 2000.

§ 1230.626 Facilities for registering and voting.

(a) Producers. Each county FSA office shall provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret;

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Copies of the Order for review.

(b) Absentee ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in-person or request it by telephone, mail, or facsimile. The FSA county office will provide absentee ballots by mail for all requests received by telephone, mail, or facsimile. The FSA county office shall record date of receipt of the ''Pork Referendum'' envelope containing the completed absentee ballot on the Absentee Voter Request List and place it unopened in a secure ballot box.

(c) Importers. The FSA headquarters office in Washington, DC, will:

(1) Mail ballot packages to eligible importers upon request;

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Mail copies of the Order to importers if requested by mail, telephone, or facsimile. Importers can also pickup a ballot in-person.

§ 1230.627 Registration form and ballot.

(a) *Producers.* (1) A ballot (Form LS–72) and combined registration and certification form (Form LS–72–2) will be used for voting in-person. The information required on the registration form includes name, address, and telephone number. Form LS–72–2 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check a ''yes'' or ''no.''

(2) A combined registration and voting form (Form LS–73) will be used for absentee voting. The information required on this combined registration and voting form includes name, address, and telephone number. Form LS–73 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check ''yes'' or ''no.''

(b) *Importers.* A combined registration and ballot form (Form LS–76) will be used for importer voting. The information required on this combined registration and ballot form includes name, address, and telephone number. Form LS–76 also contains the certification statement referenced in § 1230.629. The ballot will require importers to check ''yes'' or ''no.''

§ 1230.628 Registration and voting procedures for producers.

(a) *Registering and voting in-person.* (1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity shall register during the 3-day in-person voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation's or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs or pigs. An individual or an authorized representative of a corporation or other entity who owns hogs or pigs in more than one county shall register

and vote in the FSA county office where the individual or corporation or other entity does most of their business. Producers shall be required to record on the In-Person Voter Registration List (Form LS–75) their name and address, and if applicable, the name and address of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the in-person registration and certification form (Form LS–72–2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in §1230.612 is authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in §1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS–75) will receive a combined registration and certification form printed on an envelope (Form LS–72–2) and a ballot (Form LS–72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS–72–2) as indicated above. Producers will then mark their ballots to indicate ''yes'' or ''no.'' Producers will place their completed ballots in an envelope marked ''Pork Ballot'' (Form LS–72–1), seal and place it in the completed and signed registration form/envelope marked ''Pork Referendum'' (Form LS–72–2), seal that envelope and personally place it in a box marked ''Ballot Box'' or other designated receptacle. Voting will be conducted onsite under the supervision of the county FSA County Executive Director (CED).

(b) *Absentee voting.* (1) Eligible producers who are unable to vote in-person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS–73) and two envelopes—one marked ''Pork Ballot'' (Form LS–72–1) and the other marked ''Pork Referendum'' (Form LS–73–1) by mail, telephone, facsimile, or by picking up one in-person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or as an authorized representative of a corporation or other entity that does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by telephone, mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs or pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during August 1, 2000, through September 18, 2000.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS–74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration and certification form and absentee ballot (Form LS–73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in §1230.612, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and marking the ballot, shall remove the

ballot portion of the combined registration and absentee ballot form (Form LS–73) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Producers are required to print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package. Absentee ballots returned in-person must be received by close of business on the last day of the in-person voting period, which is September 21, 2000. Ballots received after that date will be counted as invalid ballots.

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, the county FSA CED will record the date the ''Pork Referendum'' envelope (Form LS–73–1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS–74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

§ 1230.629 Registration and voting procedures for importers.

(a) Individual importers, corporations, or other entities can obtain the registration and certification forms, ballots, and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, DC 20026–4366. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Importers may also request voting materials by facsimile or telephone. The facsimile number is 202/690–3354. The telephone number is 202/720–6833.

(b) When requesting a ballot, eligible importers will be required to submit a U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, DC, to the address provided by the importer or importer corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during August 1, 2000, through September 21, 2000.

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS–77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers will complete and sign the combined registration form and ballot (Form LS–76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.612, they are authorized to do so.

(f) Eligible importers, after completing the combined ballot and registration form, will remove the ballot portion of the combined registration and ballot form (Form LS–76) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Importers, corporations, or other entities must legibly print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis

Staff, Attention: William A. Brown, Post Office Box 44366, Washington, DC 20026–4366. Importers may hand deliver the ''Pork Referendum'' envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(g) The ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot has to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the FSA headquarters office by the close of business on the 5th business day after the date of the last day of the in-person voting period, which is September 28, 2000. If delivered in-person, it has to reach headquarters office not later than the last day of the in-person voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, an FSA employee will record the date the ''Pork Referendum'' envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS–77) directly opposite the voting importer's name. The FSA employee will place the ''Pork Referendum'' envelope, unopened, in a secure ballot box.

§ 1230.630 List of registered voters.

(a) *Producers.* The In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) will be available for inspection during the 3 days of the voting period and during the 7 business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. The Absentee and In-Person Voter Registration Lists will be updated and posted daily. The complete In-Person Voter Request List (Form LS–75) will be posted in the FSA county office on the 1st business day after the date of the last day of the voting period. The complete Absentee Voter Request List (Form LS–74) will be posted in the FSA county office on the 6th business day after the date of the last day of the voting period.

(b) *Importers.* The Importer Ballot Request List (Form LS–77) will be maintained by the FSA headquarters office in Washington, DC, and not posted.

§ 1230.631 Challenge of votes.

(a) *Challenge period.* During the dates of the 3-consecutive day voting period and the 7 business days following the voting period, the ballots of producers may be challenged at the FSA county office.

(b) *Who can challenge.* Any person can challenge a producer's vote. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS–75) or the Absentee Voter Request List (Form LS–74) can be challenged. There is no challenge process for importers.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than 12 business days after the date of the last day of the in-person voting period. FSA will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to the FSA county offices within 5 business days of notification and not later than 17 business days after the date of the last day of the voting period.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable, but no later than 22 business days after the date of the last day of the in-person voting period of its decision.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 43508, July 13, 2000, as amended at 65 FR 62579, Oct. 19, 2000]

§ 1230.632 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the in-person voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the in-person voting period and was received in the county FSA office not later than the close of business, 5 business days after the last day of the in-person voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmarked date not later than the date of the last day of the in-person voting period and was received in the FSA headquarters office in Washington, DC, not later than the close of business, 5 business days after the last day of the in-person voting period.

§ 1230.633 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS–72–2) and the absentee ''Pork Referendum'' envelopes (Form LS–73–1) containing the ''Pork Ballot'' envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS–75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS–74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed ''Pork Ballot'' envelopes (Form LS–72–1) from the registration form envelopes and ''Pork Referendum'' envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible.

After removing all ''Pork Ballot'' envelopes, FSA county employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the ''Pork Ballot'' envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff Program;

(iii) Number of producers favoring termination of the Pork Checkoff Program;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to print his or her name and address on the In-Person Voter Registration List (Form LS–75) or if an absentee voter's name and address is not recorded on the Absentee Voter Request List (Form LS–74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff Program, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

(b) *Importers*—(1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS–77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS–77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed ''Pork Ballot'' envelope (Form LS–72–1) from the ''Pork Referendum'' envelopes (Form LS–73–1) of all eligible importer voters. After removing all ''Pork Ballot'' envelopes, FSA headquarter employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the ''Pork Ballot'' envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff Program;

(iii) Number of importers favoring termination of the Pork Checkoff Program;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS–77), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they were mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.634 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA

State office. Such report will include the information listed in §1230.633. The results of the referendum in each county will be made available to the public, after the results of the referendum are announced by the Secretary. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.635 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.636 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be announced by the Department in an official press release and published in the FEDERAL REGISTER. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of producer voting results in any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

§ 1230.637 Disposition of ballots and records.

(a) *Producer ballots and records.* Each FSA CED will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.638 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

§ 1230.639 Additional absentee voter challenge period.

(a) *Absentee Voter Request List.* The Absentee Voter Request List (Form LS–74) will be available for inspection during an additional challenge period of five business days (October 23, 2000–

October 27, 2000) at county FSA offices. The Absentee Voter Request List will be posted daily during regular office hours in a conspicuous public location at FSA county offices during the additional challenge period.

(b) *Who can challenge.* Any person can challenge a producer's vote during the period provided in paragraph (a) of this section. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any person whose name is on the Absentee Voter Request List who was not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period may be challenged. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than the 2nd business day (October 31, 2000) after the last day of the additional challenge period. FSA county offices will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to FSA county offices not later than November 7, 2000.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable but no later than November 9, 2000.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office not later than November 17, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA office or as soon as practical thereafter.

(h) *Determination of appeals.* An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day (November 28, 2000) after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 62579, Oct. 19, 2000]

PART 1250—EGG RESEARCH AND PROMOTION

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1250.547 Personal liability.

AUTHORITY: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

Subpart—Referendum Procedures

SOURCE: 75 FR 55256, Sept. 10, 2010, unless otherwise noted.

§ 1250.200 Referenda.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of an Egg Research and Promotion Order, or the continuance, termination, or suspension of such an order, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1250.201 Definitions.

(a) *Act* means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93–428, 7 U.S.C. 2701 *et seq.*).

(b) *Administrator* means the administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Egg producer or producer* means any person who either is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(d) *Order* means the order or any amendment thereto promulgated pursuant to the act with respect to which the Secretary has directed that a referendum be conducted.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(f) *Referendum agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(g) *Representative period* means the period designated by the Secretary pursuant to section 9 of the Act (7 U.S.C. 2708).

(h) *Secretary* means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may be hereafter delegated, the authority to act in the Secretary's stead.

§ 1250.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, who was engaged in the production of commercial eggs during the representative period, and who is not exempt from the provisions of the order as provided for in § 1250.348 thereof, shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trustee of a producing estate, or an authorized representative of any other entity may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of his authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

§ 1250.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining whether the person voting or on whose behalf the vote is cast, is an eligible voter, and the total volume of commercial eggs produced during a representative period.

(d) Give reasonable advance notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: Provided, that no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer whose name and address are known to the Secretary or the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1250.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) See the ballots and the aforesaid texts are distributed to producers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and inquire, as deemed appropriate, into the eligibility of such persons to vote in the referendum.

§ 1250.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, and the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1250.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1250.207 Confidential information.

The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential. The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

Subpart—Egg Research and Promotion Order

SOURCE: 40 FR 59190, Dec. 22, 1975, unless otherwise noted.

DEFINITIONS

§ 1250.301 Secretary.

Secretary means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1250.302 Act.

Act means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93–428).

§ 1250.303 Fiscal period.

Fiscal period means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

§ 1250.304 Egg Board or Board.

Egg Board or *Board* or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

§ 1250.305 Egg producer or producer.

Egg producer or *producer* means any person who either:

(a) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(b) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual argeement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.306 Commercial eggs or eggs.

Commercial eggs or *eggs* means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

§ 1250.307 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1250.308 United States.

United States means the 48 contiguous States of the United States of America and the District of Columbia.

§ 1250.309 Handler.

Handler means any person who receives or otherwise acquires eggs from

an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

§ 1250.310 Promotion.

Promotion means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 1250.311 Research.

Research means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

§ 1250.312 Marketing.

Marketing means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

§ 1250.313 Eligible organization.

Eligible organization means any organization, association, or cooperative which represents egg producers of any egg producing area of the United States certified by the Secretary pursuant to § 1250.356.

§ 1250.314 Plans and projects.

Plans and *projects* means those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

§ 1250.315 Part and subpart.

Part means the Egg Research and Promotion Order and all rules, regulations, and supplemental order issued pursuant to the act and the order. ''Subpart'' refers to the aforesaid order or any other portion or segment of this part.

§ 1250.316 Representative of a producer.

Representative of a producer means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

EGG BOARD

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the ''Board,'' composed of 18 egg producers or representatives of egg producers, and 18 specific alternates, all appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328.

§ 1250.327 Term of office.

The members of the Board, and their alternates, shall serve for terms of 2 years, except initial appointments shall be, proportionately, for terms of 2 and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has qualified. No member shall serve for more than three consecutive terms.

§ 1250.328 Nominations.

All nominations authorized under § 1250.326 shall be made in the following manner:

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic area as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 1250.356, or, if the Secretary determines that a substantial number of egg producers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such egg producers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each

member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary two nominations for each appointment to be made;

(d) The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1–3, Area 2–4, Area 3–2, Area 4–2, Area 5–4, and Area 6–3, for a total of 18 members from all areas. Changes to the Board as provided in paragraph (e) of this section shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number; and

(e) After the establishment of the initial Board, the area grouping of the 48 contiguous States of the United States, including the area distribution of the 18 members of the Board and their alternates, shall be reviewed at any time not to exceed 5 years by the Board, or by a person or agency designated by the Board to perform such review, and the results shall be reported to the Secretary along with any recommendations by the Board regarding whether the delineation of the areas and the area distribution of the Board should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area, providing that each area shall be represented by not less than one Board member and any action recommended shall be subject to the approval of the Secretary.

[40 FR 59190, Dec. 22, 1975, as amended at 60 FR 66861, Dec. 27, 1995]

§ 1250.329 Selection.

From the nominations made pursuant to § 1250.328, the Secretary shall appoint the members of the Board, and an alternate for each such member, on the basis of representations provided for in § 1250.326, § 1250.327, and § 1250.328.

§ 1250.330 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Board shall qualify by filing a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1250.331 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person appointed as a member, or as an alternate member, of the Board, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated, qualified, and appointed in the manner specified in § 1250.326, § 1250.328(b), § 1250.329, and § 1250.330, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 1250.332 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and qualified.

§ 1250.333 Procedure.

(a) A majority of the members, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1250.334 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1250.335 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1250.336 Duties.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, to adopt such rules for the conduct of its business as it may deem advisable, and it may establish advisory committees of persons other than Board members;

(b) To appoint or employ such persons as it may deem necessary and to define the duties and determine the compensation of each;

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto. In preparing a budget for each of the 1994 and subsequent fiscal years, the Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects comparable to the proportion of funds allocated for research projects in the Board's fiscal year 1993 budget.

(d) With the approval of the Secretary, to enter into contracts or agreements with persons, including, but not limited to, State, regional, or national agencies or State, regional, or national egg organizations which administer research, education, or promotion programs, advertising agencies, public relations firms, public or private research organizations, advertising and promotion media, and egg producer organizations, for the development and submission to it of plans and projects authorized by § 1250.341 and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the cost thereof with funds collected pursuant to § 1250.347. Any such contracts or agreements shall provide that such contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contractor shall keep accurate records of all of its transactions and make periodic reports to the Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(e) To review and submit to the Secretary any plans or projects which have been developed and submitted to it by the prospective contractor, together with its recommendations with respect to the approval thereof by the Secretary;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g)–(h) [Reserved]

(i) To prepare and make public, at least annually, a report of activities carried out and an accounting for funds received and expended;

(j) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may

request, and submit a copy of each such audit to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings;

(l) To act as an intermediary between the Secretary and any producer or handler; and

(m) To submit to the Secretary such information pursuant to this subpart as he may request.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 99, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989; 54 FR 12310, Mar. 24, 1989; 59 FR 38876, Aug. 1, 1994; 60 FR 66861, Dec. 27, 1995]

RESEARCH, EDUCATION, AND PROMOTION

§ 1250.341 Research, education, and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided, however,* That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research, marketing, and development projects and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof in accordance with section 7(b) of the act, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated;

(c) The development and expansion of foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl;

(d) Each program or project authorized under paragraphs (a), (b), and (c) of this section shall be periodically reviewed or evaluated by the Board to insure that each such program or project contributes to a coordinated national program of research, education, and promotion contributing to the maintenance of markets and for the development of new markets for and of new products from eggs, egg products, spent fowl, and products of spent fowl. If it is found by the Board that any such program or project does not further the national purpose of the act, then the Board shall terminate such program or project; and

(e) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1250.346 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable. The funds to cover such expenses shall be paid from assessments received pursuant to §1250.347.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 100, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989]

§ 1250.347 Assessments.

Each handler designated in §1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in §1250.348, and shall pay to the Board at such times and in such manner as prescribed by

regulations issued by the Board an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

[59 FR 64560, Dec. 15, 1994]

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens. The aggregate number of laying hens owned by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity. Ownership of laying hens by an egg producer also shall include the following:

(1) In cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(2) In cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(3) In cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity. Stock or other beneficial interest in an entity that is held by the following shall be considered as held by the producer:

(i) Members of the producer's family described in paragraph (a)(1);

(ii) A general partnership or similar entity in which the producer is a partner or equity participant;

(iii) The partners or equity participants in an entity of the type described in (a)(3)(ii); or

(iv) A corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests.

(b) Any egg producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) In order to qualify for exemption from the provisions of the Act under this section, producers claiming such exemption must comply with § 1250.530 regarding certification of exempt producers and other such regulations as may be prescribed by the Secretary as a condition to exemption from the provisions of the Act under this section.

[55 FR 6973, Feb. 28, 1990, as amended at 59 FR 38876, Aug. 1, 1994]

§ 1250.349 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessment specified in § 1250.347 shall be any one of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309,

(2) A producer who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309 for eggs of his own production, or

(3) Such other persons as designated by the Board under rules and regulations issued pursuant to this subpart.

(b) Handlers shall collect and remit to the Egg Board all assessments collected in the manner and in the time specified by the Board pursuant to rules and regulations issued by the Board.

(c) Handlers shall maintain such records as the Egg Board may prescribe pursuant to rules and regulations issued by the Board.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to collect assessments in its behalf.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.350 [Reserved]

§ 1250.351 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except to recommend to the Secretary amendments to this subpart.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

REPORTS, BOOKS, AND RECORDS

§ 1250.352 Reports.

Each handler subject to this subpart and other persons subject to section 7(c) of the act may be required to report to the Board periodically such information as is required by regulations and will effectuate the purposes of the act, which information may include but not be limited to the following:

(a) Number of cases of eggs handled;

(b) Number of cases of eggs on which an assessment was collected;

(c) Name and address of person from whom any assessment was collected; and

(d) Date collection of assessment was made on each case of eggs handled.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.353 Books and records.

Each handler subject to this subpart and persons subject to section 7(c) of the act shall maintain and make available for inspection by the Board or the Secretary such books and records as are necessary to carry out the provisions of the subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.354 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this paragraph shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period of time, or (3) the publication, by direction of the Secretary, of the name of any person violating this subpart together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds, except as provided in paragraph (a)(2) of this section, made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and the Board.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

CERTIFICATION OF ORGANIZATIONS

§ 1250.356 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members on the Board to represent the geographic area in which the organization represents egg producers. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of

total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its egg producer membership consists of a substantial number of egg producers who produce a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in the nomination of members for the Board or to request the issuance of an order. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final.

MISCELLANEOUS

§ 1250.357 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of egg producers voting in the referendum approving this subpart, to determine whether egg producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart at the end of 6 months after he determines that suspension or termination of the subpart is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 percent of the volume of eggs produced by the egg producers voting in the referendum.

§ 1250.358 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than six of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary, (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1250.336, (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct, and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the research or promotion programs hitherto authorized.

§ 1250.359 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued hereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1250.360 [Reserved]

§ 1250.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1250.362 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by an organization certified pursuant to section 16 of the act, or by any interested person affected by the provisions of the act, including the Secretary.

§ 1250.363 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 41 FR 22925, June 8, 1976, unless otherwise noted.

DEFINITIONS

§ 1250.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Egg Research and Consumer Information Act, hereinafter called the Act, and the Egg Research and Promotion Order, hereinafter called the Order.

(a) *Act.* ''Act'' means the Egg Research and Consumer Information Act as it may be amended (Pub. L. 93–428).

(b) *Secretary.* ''Secretary'' means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(c) *Egg Board or Board.* ''Egg Board'' or ''Board'' or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

(d) *Fiscal period.* ''Fiscal period'' means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

(e) *Egg producer or producer.* ''Egg producer'' or ''producer'' means any person who either:

(1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility

shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(f) *Commercial eggs or eggs.* ''Commercial eggs'' or ''eggs'' means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(g) *Person.* ''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) *Handle.* ''Handle'' means to grade, carton, process, transport, purchase, or in any way place eggs or cause eggs to be placed in the current of commerce. Such term shall not include the washing, the packing in cases, or the delivery by the producer of his own nest run eggs.

(i) *Handler.* ''Handler'' means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production.

(j) *Egg products.* ''Egg products'' means products produced, in whole or in part, from eggs.

(k) *Cooperating agency.* ''Cooperating agency'' means any person with which the Egg Board has entered into an agreement pursuant to §1250.517(c).

(l) *Case.* ''Case'' means the standard shipping package containing 30-dozen eggs or the equivalent thereof.

(m) *Plans and projects.* ''Plans'' and ''projects'' mean those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to §1250.341.

(n) *Representative of a producer.* ''Representative of a producer'' means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

(o) *Hen or laying hen.* ''Hen'' or ''laying hen'' means a domesticated female chicken 20 weeks of age or over, raised primarily for the production of commercial eggs.

(p) *Hatching eggs.* ''Hatching eggs'' means eggs intended for use by hatcheries for the production of baby chicks.

(q) *United States.* ''United States'' means the 48 contiguous States of the United States of America and the District of Columbia.

(r) *Promotion.* ''Promotion'' means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(s) *Research.* ''Research'' means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

(t) *Consumer education.* ''Consumer education'' means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(u) *Marketing.* ''Marketing'' means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(v) *Commerce.* ''Commerce'' means interstate, foreign, or intrastate commerce.

(w) *Spent fowl.* ''Spent fowl'' means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(x) *Products of spent fowl.* ''Products of spent fowl'' means commercial products produced from spent fowl.

(y) *Started pullet.* ''Started pullet'' means a hen less than 20 weeks of age.

(z) *Shell egg packer.* ''Shell egg packer'' means any person grading eggs into their various qualities.

(aa) *Egg breaker.* ''Egg breaker'' means any person subject to the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) engaged in the breaking of shell eggs or otherwise involved in preparing shell eggs for use as egg products.

(bb) *Nest run eggs.* ''Nest run eggs'' means eggs which are packed as they come from the production facilities without having been sized and/or candled with the exception that some checks, dirties, or obvious undergrades may have been removed and provided

further that the eggs may have been washed.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

§ 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 1250 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
Sec.:	
1250.523	0581–0098
1250.528	0581–0098
1250.529	0581–0098
1250.530	0581–0098
1250.535	0581–0098

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) and Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701–2718))

[48 FR 56566, Dec. 22, 1983]

GENERAL

§ 1250.505 Communications.

Communications in connection with the Order shall be addressed to the Egg Board at its business address.

§ 1250.506 Policy and objective.

(a) It shall be the policy of the Egg Board to carry out an effective and continuous coordinated program of research, consumer and producer education, advertising, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States.

(b) It shall be the objective of the Egg Board to carry out programs and projects which will provide maximum benefit to the egg industry and no undue preference shall be given to any of the various industry segments.

§ 1250.507 Contracts.

The Egg Board, with the approval of the Secretary, may enter into contracts with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Egg Board shall be subject to the provisions of this subpart.

§ 1250.508 Procedure.

The organization of the Egg Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1250.509 USDA costs.

Pursuant to §1250.347 of the Order, the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

§ 1250.510 Determination of Board Membership.

(a) Pursuant to §1250.328 (d) and (e), the 48 contiguous States of the United States shall be grouped into three geographic areas, as follows: Area 1 (East)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, the District of Columbia, Alabama, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, and Texas; Area 2 (Central)—Arkansas, Oklahoma, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and Wisconsin; Area 3 (West)—Arizona, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) Board representation among the three geographic areas is apportioned to reflect the percentages of United States egg production in each area times 18 (total Board membership). The distribution of members of the Board is: Area 1–6, Area 2–6, and Area 3–6. Each member will have an alternate appointed from the same area.

[85 FR 62945, Oct. 6, 2020]

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

§ 1250.514 Levy of assessments.

An assessment rate of 10 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. Each case of commercial eggs shall be subject to assessment only once. Producers meeting the requirements of § 1250.348 are exempt from the provisions of the Act including this section.

[55 FR 6974, Feb. 28, 1990, as amended at 59 FR 64560, Dec. 15, 1994]

§ 1250.515 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar month or a 4-week accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Board on an individual basis. Each collecting handler shall register his reporting period with the Board. All changes in reporting periods shall be requested in writing and subject to approval by the Board.

(b) Each producer shall pay the required assessment on his commercial eggs pursuant to § 1250.514 to the collecting handler designated in § 1250.516 on or before the date of final settlement between the producer and the collecting handler for the eggs received by the collecting handler during each reporting period.

§ 1250.516 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessments shall be any of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, or breaks such eggs. Such shell egg breaker or egg packer must collect and remit to the Board the assessments on all eggs handled except eggs for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(2) A person who buys or receives nest run eggs from a producer and who does not grade, carton, or break such eggs. Such person shall collect the assessment from the producer and remit to the Egg Board on all such eggs, except for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(3) Except as otherwise provided in paragraph (a)(4) of this section, a producer who grades, cartons, or breaks eggs of his own production shall be responsible for remitting the assessment to the Board on all eggs produced. This would include the eggs which he grades, cartons, or breaks as well as the nest run eggs which are graded, cartoned, or broken by another handler. Such a producer who remits the assessment on nest run eggs to the Board shall provide the handler specified in paragraph (a) (1) or (2) of this section with a written statement that the assessment has already been paid on the nest run eggs; or

(4) Upon approval of the Board, any person who handles eggs for a producer under a written contract that includes express provisions that said handler will remit the assessment on such eggs to the Board shall be the collecting handler notwithstanding the fact that the producer may have graded, cartoned, or otherwise processed the eggs.

Following are some examples to aid in identification of collecting handlers:

(i) Producer sells, assigns, consigns, or otherwise delivers nest run eggs of his own production to a shell egg packer or breaker for preparation for market—the shell egg packer or breaker is the collecting handler and is responsible for remitting to the Egg Board;

(ii) Producer grades, cartons, breaks, or otherwise prepares for marketing a portion of the eggs of his own production and delivers the remaining portion

of his nest run eggs to a shell egg packer or breaker—the producer is the collecting handler and shall remit the assessment on his total production to the Board;

(iii) Producer sells all or a portion of his eggs in nest run form to a handler who is not a shell egg packer or breaker—the handler is responsible for collecting the assessment and remitting it to the Egg Board except for eggs covered by a statement indicating that an assessment has already been paid;

(iv) A shell egg packer or breaker who buys or receives nest run eggs from a handler who is not a shell egg packer or breaker—the handler is the collecting handler and shall remit such assessment to the Board;

(v) A shell egg packer or egg breaker buys nest run or graded eggs including undergrade eggs from another shell egg packer or egg breaker—the first shell egg packer or breaker is the collecting handler and shall remit such assessments to the Board.

(b) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer or his estate, or the person acting on behalf of creditors, shall be considered the producer of the eggs for the purpose of this subpart.

(c) The collecting handler may collect the assessment directly from the producer or deduct the assessment from the proceeds due or paid to the producer on whose eggs the assessment is made.

[41 FR 22925, June 8, 1976, as amended at 42 FR 60724, Nov. 29, 1977]

§ 1250.517 Remittance to Egg Board.

(a) The collecting handler responsible for remittance of assessments to the Board is not relieved of this obligation as a result of his failure to collect payment of the assessment from the egg producer(s).

(b) Each collecting handler required to remit the assessments on the eggs handled during each reporting period, specified in § 1250.515(a), shall remit the assessments directly to the Egg Board by check, draft, or money order payable to the Egg Board on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529. The assessment for each reporting period shall be calculated on the basis of the gross volume of eggs subject to assessment received by the collecting handler during each reporting period.

(c) Remittance through cooperating agency.

(1) In any State or specified geographic area the Egg Board, with the approval of the Secretary, may designate by agreement a cooperating agency to collect the assessments in its behalf. Every collecting handler within such a State or geographic area shall remit the assessments for each reporting period, specified in § 1250.515(a), to the designated cooperating agency by check, draft, or money order payable to said cooperating agency on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529.

(2) On or before the 20th day after the end of each reporting period, each designated cooperating agency shall remit to the Egg Board the total amount of all assessments received from collecting handlers for said reporting period together with all collecting handler reports. In addition, each designated cooperating agency shall submit to the Egg Board such information as is required by the designation agreement with the Egg Board.

§ 1250.518 Receipts for payment of assessments.

(a) Each collecting handler shall give each producer whose eggs are subject to assessment a receipt for the commercial eggs handled by said collecting handler showing payment of the assessment. This receipt may be on a separate receipt form or included as part of the invoice or settlement sheet for the eggs, but in either event shall contain the following information:

(1) Name, address, and identification number of the collecting handler;

(2) Name and address of the producer who paid the assessment;

(3) Number of cases of eggs on which assessment was paid and the total amount of the assessment; and

(4) Date on which assessment was paid by producer.

(b) All eggs sold, consigned, or delivered from a collecting handler to another handler, excluding cartoned eggs

and loose graded eggs sold to the bakeries, restaurants, and institutions, shall be accompanied with the collecting handler's written statement that the assessment on the lot of eggs covered by the invoice has been paid or that lot of eggs or portion thereof is exempt from assessment under provisions of § 1250.514.

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-payment charges from the time such assessments should have been remitted. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

[58 FR 34697, June 29, 1993]

REGISTRATION, CERTIFICATION AND REPORTS

§ 1250.528 Registration of collecting handlers.

All collecting handlers shall, prior to August 1, 1976, register with the Egg Board by filing a registration statement. Registered collecting handlers will receive an identification number which must appear on all required reports and official communications with the Egg Board. New businesses subject to this subpart beginning after August 1, 1976, shall register with the Egg Board within 30 days following the beginning of operations. The statement of registration shall include:

(a) Name and complete address of the collecting handler;

(b) Name of individual(s) responsible for filing reports with the Egg Board; and

(c) Type of reporting period desired.

§ 1250.529 Reports.

(a) *Collecting handler reports.* (1) Each collecting handler shall make reports on forms made available or approved by the Egg Board. Each collecting handler shall prepare a separate report form each reporting period. Each report shall be mailed to the Egg Board within 15 days after the close of the reporting period and shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by the report;

(iii) Name and address of collecting handler and identification number;

(iv) Total number of cases of eggs handled, total number of cases of eggs subject to collection of assessment, total number of cases of eggs exempt under § 1250.514 from collection of assessment, total number of cases of imported eggs handled, and total number of cases of eggs received from another handler and on which an assessment was already collected;

(v) The names and addresses of producers subject to assessment supplying eggs to the handlers and number of cases of eggs received from each producer;

(vi) Total amount of assessment due for eggs handled during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Board.

(2) Collecting handler reports shall be filed each reporting period following registration until such time as the Egg Board is notified in writing that the collecting handler has ceased to do business. During reporting periods in which the collecting handler does not handle any eggs, his report form shall state ''No Eggs Handled.''

(b) The Egg Board may require all persons subject to section 7(c) of the Act to make reports as needed for the enforcement and administration of the Order and as approved by the Secretary.

§ 1250.530 Certification of exempt producers.

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell

eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of §1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according to the requirements of §1250.348, and the signature of the producer.

(b) *Organic Production.* (1) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(6) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(c) If the exempt producer no longer qualifies for an exemption as specified in §1250.348 or 1250.530(b), that producer shall notify, within 10 days, all handlers with whom the producer has filed a Certificate of Exemption.

[70 FR 2761, Jan. 14, 2005, as amended at 80 FR 82034, Dec. 31, 2015]

RECORDS

§ 1250.535 Retention of records.

(a) Each person required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(1) One copy of each report submitted to the Egg Board;

(2) Records of all exempt producers including certification of exemption as necessary to verify the address of each exempt producer; and

(3) Such other records as are necessary to verify reports submitted to the Egg Board.

(b) Egg producers subject to §1250.514 shall maintain and retain for at least 2 years beyond the period of their applicability:

(1) Receipts, or copies thereof, for payment of assessments; and

(2) Such records as are necessary to verify monthly levels of egg production.

§ 1250.536 Availability of records.

Each handler and egg producer subject to this subpart and all persons subject to section 7(c) of the Act shall make available for inspection and copying by authorized employees of the Egg Board and/or the Secretary during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1250.537 Confidentiality.

All information obtained by officers and employees of the Department of Agriculture, the Egg Board, or any person under contract by the Egg Board or otherwise acting on behalf of the Egg Board from the books, records, and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual producers, shall be kept confidential in the manner and to the extent provided in §1250.353 of the Order.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

§ 1250.542 Patents, Copyrights, Inventions, Trademarks, Information, Publications, and Product Formulations.

(a) Except as provided in paragraph (b) of this section, any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, §1250.358 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by an agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

[81 FR 90186, Dec. 14, 2016]

PERSONAL LIABILITY

§ 1250.547 Personal liability.

No member, alternate member, employee, or agent of the Board in the performance of his duties with the Board shall be held personally responsible either individually or jointly with

others, in anyway whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

PART 1260—BEEF PROMOTION AND RESEARCH

Subpart A—Beef Promotion and Research Order

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AUTHORITY: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

Subpart A—Beef Promotion and Research Order

SOURCE: 51 FR 26138, July 18, 1986, unless otherwise noted.

DEFINITIONS

§ 1260.101 Department.

Department means the United States Department of Agriculture.

§ 1260.102 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.103 Board.

Board means the Cattlemen's Beef Promotion and Research Board established pursuant to the Act and this subpart.

§ 1260.104 Committee.

Committee means the Beef Promotion Operating Committee established pursuant to the Act and this subpart.

§ 1260.105 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.106 Collecting person.

Collecting person means the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary.

§ 1260.107 State.

State means each of the 50 States.

§ 1260.108 United States.

United States means the 50 States and the District of Columbia.

§ 1260.109 Unit.

Unit means each State, group of States or class designation which is represented on the Board.

§ 1260.110 [Reserved]

§ 1260.111 Fiscal year.

Fiscal year means the calendar year or such other annual period as the Board may determine.

§ 1260.112 Federation.

Federation means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State beef councils.

§ 1260.113 Established national nonprofit industry-governed organizations.

Established national nonprofit industry-governed organizations means organizations which:

(a) Are nonprofit organizations pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis; and

(c) Have been active and ongoing for at least two years.

[51 FR 26138, July 18, 1986, as amended at 77 FR 52599, Aug. 30, 2012]

§ 1260.114 Eligible organization.

Eligible organization means any organization which has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1260.115 Qualified State beef council.

Qualified State beef council means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts

beef promotion, research, and consumer and industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.

§ 1260.116 Producer.

Producer means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.117 Importer.

Importer means any person who imports cattle, beef, or beef products from outside the United States.

§ 1260.118 Cattle.

Cattle means live domesticated bovine animals regardless of age.

§ 1260.119 Beef.

Beef means flesh of cattle.

§ 1260.120 Beef products.

Beef products means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.121 Imported beef or beef products

Imported beef or beef products means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more numbers in the Tariff Schedule of the United States.

[82 FR 24456, May 30, 2017]

§ 1260.122 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

Research means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

Consumer information means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

Industry information means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

§ 1260.126 Plans and projects.

Plans and projects means promotion, research, consumer information and industry information plans, studies or projects conducted pursuant to this subpart.

§ 1260.127 Marketing.

Marketing means the sale or other disposition in commerce of cattle, beef or beef products.

§ 1260.128 Act.

Act means the Beef Promotion and Research Act of 1985, Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99–198 and any amendments thereto.

§ 1260.129 Customs Service.

Customs Service means the United States Customs and Border Protection

of the United States Department of Homeland Security.

[79 FR 46963, Aug. 12, 2014]

§ 1260.130 Part and subpart.

Part means the Beef Promotion and Research Order and all rules and regulations issued pursuant to the Act and the order, and the order itself shall be a ''subpart'' of such part.

CATTLEMEN'S BEEF PROMOTION AND RESEARCH BOARD

§ 1260.141 Membership of Board.

(a) Beginning with the 2023 Board nominations and the associated appointments effective early in the year 2024, the United States shall be divided into 38 geographical units and 1 unit representing importers, for a total of 39 units. The number of Board members from each unit shall be as follows:

TABLE 1 TO PARAGRAPH (a)—CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,285	1
2. Arizona	967	1
3. Arkansas	1,733	2
4. Colorado	2,700	3
5. Florida	1,670	2
6. Georgia	1,077	1
7. Idaho	2,507	3
8. Illinois	1,047	1
9. Indiana	833	1
10. Iowa	3,800	4
11. Kansas	6,483	6
12. Kentucky	2,073	2
13. Louisiana	777	1
14. Michigan	1,137	1
15. Minnesota	2,203	2
16. Mississippi	917	1
17. Missouri	4,217	4
18. Montana	2,383	2
19. Nebraska	6,800	7
20. New Mexico	1,373	1
21. New York	1,433	1
22. North Carolina	798	1
23. North Dakota	1,893	2
24. Ohio	1,283	1
25. Oklahoma	5,217	5
26. Oregon	1,260	1
27. Pennsylvania	1,430	1
28. South Dakota	3,900	4
29. Tennessee	1,783	2
30. Texas	12,900	13
31. Utah	803	1
32. Virginia	1,410	1
33. Wisconsin	3,467	3
34. Wyoming	1,290	1
35. Northwest Unit:		
Alaska	17	
Hawaii	142	
Washington	1,157	
Total	1,316	
36. Northeast Unit:		
Connecticut	48	
Delaware	13	
Maine	77	
Maryland	174	
Massachusetts	36	
New Hampshire	32	
New Jersey	26	
Rhode Island	4	
Vermont	248	
Total	658	1
37. Mid-Atlantic Unit:		
South Carolina	327	
West Virginia	380	

TABLE 1 TO PARAGRAPH (a)—CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
Total	707	1
38. Southwest Unit:		
California	5,167	
Nevada	465	
Total	5,632	6
39. Importers Unit [2]	7,466	7

[1] 2020, 2021, and 2022 average of January 1 cattle inventory data.
[2] 2019, 2020, and 2021 average of annual import data.

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to the Act and regulations of this part. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members who shall serve on the Board for each unit:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products into live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202 industry data and data published by the Department.

[51 FR 26138, July 18, 1986, as amended at 55 FR 20445, May 17, 1990; 58 FR 12999, Mar. 9, 1993; 60 FR 62020, Dec. 4, 1995; 64 FR 3815, Jan. 26, 1999; 67 FR 11412, Mar. 14, 2002; 70 FR 7005, Feb. 10, 2005; 73 FR 60098, Oct. 10, 2008; 76 FR 42014, July 19, 2011; 79 FR 46963, Aug. 12, 2014; 82 FR 27612, June 16, 2017; 85 FR 39463, July 1, 2020; 88 FR 76100, Nov. 6, 2023]

§ 1260.142 Term of office.

(a) The members of the Board shall serve for terms of three (3) years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. To the extent practicable, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive 3-year terms in such capacity.

§ 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary may solicit nominations from organizations, and producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by—

(1) Organizations which represent importers of cattle, beef or beef products, as determined by the Secretary, or

(2) Individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty (60) days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Federation Board of Directors shall not be eligible for appointment to serve on the Board for a concurrent term.

§ 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers or importers of the unit represented by the vacancy. If no eligible organization(s) represents producers or importers in such unit, then the Secretary shall determine the manner in which nominations for the vacancy are submitted.

§ 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any

such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

§ 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1260.150 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an Executive Committee of no more than 11 and no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The vice-chairperson of the Board shall serve as chairperson of the Executive Committee and the chairperson and the treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the Executive Committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel, and facilities of established national nonprofit industry-governed organizations;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Beef Promotion Operating Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements, including the Committee's anticipated expenses and disbursements, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to

make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i)–(j) [Reserved]

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to §1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995]

§1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to §1260.172.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to §1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) [Reserved]

(d) Expenditures for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to §1260.172(a).

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 60 FR 58502, Nov. 28, 1995]

BEEF PROMOTION OPERATING COMMITTEE

§1260.161 Establishment and membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the chairperson, vice-chairperson and treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, vice-chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a qualified State beef council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit to the Secretary the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a qualified State beef council on the Federation Board of Directors. The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee

and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) of this section.

§ 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

§ 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The chairperson of the Federation shall be vice-chairperson of the Committee.

(c) The treasurer of the Board shall be treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the Committee and pay the necessary and reasonable expenses and fees of the members of such committees.

§ 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national nonprofit industry-governed organizations to implement programs of promotion, research, consumer information and industry information;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval budgets on a fiscal-

period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary to enter into contracts or agreements with established national nonprofit industry-governed organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.169 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.169 Promotion, research, consumer information and industry information.

The Committee shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans and projects for promotion, research, consumer information and industry information authorized by this subpart. Such plans and projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this section shall be periodically reviewed or evaluated by the Committee to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the

approval of the Board and the Secretary. No such plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this part.

ASSESSMENTS

§ 1260.172 Assessments.

(a) *Domestic assessments.* (1) Except as prescribed by regulations approved by the Secretary, each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar ($1) per head of cattle purchased and such collecting person shall remit the assessment to the Board or to a qualified State beef council pursuant to §1260.172(a)(5).

(2) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to §1260.172(a), a producer who is contributing to a qualified State beef council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(4) In order for a producer described in §1260.172(a) to receive the credit authorized in §1260.172(a)(3), the qualified State beef council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a qualified State beef council.

(5) Each person responsible for the remittance of the assessment pursuant to §1260.172 (a) (1) and (2) shall remit the assessment to the qualified State beef council in the State from which the cattle originated prior to sale, or if there is no qualified State beef council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize qualified State beef councils to propose modifications to the foregoing ''State of origin'' rule to ensure effective coordination of assessment collections between qualified State beef councils. Qualified State beef councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, ''State of origin'' rule means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the 15th day of the month following the month in which the cattle were purchased or marketed.

(6) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in §1260.172 (a)(1) and (2) for use by a qualified State beef council to fund activities similar to those described in §1260.169, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then any producer subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(7) A producer may request a redirection of assessments from a Qualified State Beef Council to the Board in accordance with §1260.181(b)(8) or (9) by submitting a redirection request on the appropriate form postmarked by the 15th day of the month following the month in which the cattle were sold. Requests may not be retroactive. Requests to redirect assessments must be submitted by the producers who paid the assessments.

(b) *Importer assessments.* (1) Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Board through the U.S. Customs Service, or in such other manner as may be established by regulations approved by the Secretary.

(2) The assessment rates for imported cattle, beef, beef products, are as follows:

IMPORTED LIVE CATTLE

HTS No.	Assessment rate per head
0102.10.0010	$1.00
0102.10.0020	1.00
0102.10.0030	1.00
0102.10.0050	1.00
0102.90.2011	1.00
0102.90.2012	1.00
0102.90.4024	1.00
0102.90.4028	1.00
0102.90.4034	1.00
0102.90.4038	1.00
0102.90.4054	1.00
0102.90.4058	1.00
0102.90.4062	1.00
0102.90.4064	1.00
0102.90.4066	1.00
0102.90.4068	1.00
0102.90.4072	1.00
0102.90.4074	1.00
0102.90.4082	1.00
0102.90.4084	1.00

TABLE 2 TO PARAGRAPH (b)(2)—IMPORTED BEEF AND BEEF PRODUCTS

HTS code	Assessment rate per kg
0201.10.0510	.01431558
0201.10.0590	.00379102
0201.10.1010	.01431558
0201.10.1090	.00379102
0201.10.5010	.01431558
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5015	.01431558
0201.20.5025	.00379102
0201.20.5035	.00379102

TABLE 2 TO PARAGRAPH (b)(2)—IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS code	Assessment rate per kg
0201.20.5045	.00379102
0201.20.5055	.00379102
0201.20.5065	.00379102
0201.20.5075	.00379102
0201.20.5085	.00379102
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787
0201.30.5015	.02090075
0201.30.5025	.00511787
0201.30.5035	.00511787
0201.30.5045	.00511787
0201.30.5055	.00511787
0201.30.5065	.00511787
0201.30.5075	.00511787
0201.30.5085	.00511787
0201.30.8090	.00511787
0202.10.0510	.01431558
0202.10.0590	.00379102
0202.10.1010	.01431558
0202.10.1090	.00370102
0202.10.5010	.01431558
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102
0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5025	.00379102
0202.20.5035	.00379102
0202.20.5045	.00379102
0202.20.5055	.00379102
0202.20.5065	.00379102
0202.20.5075	.00379102
0202.20.5085	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5015	.02090075
0202.30.5025	.00511787
0202.30.5035	.00511787
0202.30.5045	.00511787
0202.30.5055	.00511787
0202.30.5065	.00511787
0202.30.5075	.00511787
0202.30.5085	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0500	.00771610
1602.50.0720	.00663428
1602.50.0740	.00663428
1602.50.0800	.00663428
1602.50.2120	.00701388
1602.50.2140	.00701388
1602.50.6000	.00720293

(3) The Board may prescribe by regulation, with the approval of the Secretary, an increase or decrease in the level of assessments for imported beef and beef products based upon revised determinations of live animal equivalencies.

(4) The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products into the United States, or in such other manner as may be provided by regulations prescribed by the Board and approved by the Secretary.

(c) The collection of assessments pursuant to §1260.172 (a) and (b) shall begin with respect to cattle purchased or cattle, beef, and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable as appropriate to the qualified State beef council or the ''Cattlemen's Beef Promotion and Research Board.'' Such remittances and the reports specified in §1260.201 shall be mailed to the location designated by the Board.

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 54 FR 28019, July 5, 1989; 71 FR 47076, Aug. 16, 2006; 82 FR 24457, May 30, 2017; 84 FR 20771, May 13, 2019; 85 FR 826, Jan. 8, 2020; 85 FR 4191, Jan. 24, 2020]

§§ 1260.173–1260.174 [Reserved]

§ 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to §1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the qualified State beef council or Board, whichever is earlier.

§ 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines that money is due the Board or that money is due any person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in §1260.172. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1260.181 Qualified State Beef Councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to §1260.172(a)(3) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State beef council to be certified by the Board as a qualified State beef council, the council must:

(1) Conduct activities as defined in §1260.169 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such council will collect assessments paid on cattle originating from the State or

unit within which the council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to §1260.172(a)(3), by the 15th day of the month following the month in which the assessment was remitted to the Qualified State Beef Council unless the Board determines a different date for remittance of assessments.

(5) [Reserved]

(6) Certify to the Board that the council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of any unfair or deceptive acts or practices including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(8) Certify to the Board, if the Council is authorized or permitted to pay refunds of contributions to the Council, that any requests from producers for such refunds by the producers will be honored by redirecting to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to §1260.172(a)(3).

(9) Certify to the Board that, if the Council is in a State in which State law does not require collection of the $1-per-head assessment set forth in the Act (the federal assessment) by the Council, or if the Council is in a State in which State statutes do not require producers to contribute a portion of the $1-per-head federal assessment to the Council, the Council will provide an opportunity for producers to choose to direct the full $1-per-head federal assessment to the Board.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995; 84 FR 20771, May 13, 2019]

REPORTS, BOOKS AND RECORDS

§1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers, and each collecting person making payment to producers and responsible for the collection of the assessment under §1260.172 shall report to the Board periodically information required by regulations prescribed by the Board and approved by the Secretary. Such information may include but is not limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

EFFECTIVE DATE NOTE: At 51 FR 26138, July 18, 1986, §1260.201 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§1260.202 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by the Secretary the records required by regulations prescribed by the Board and approved by the Secretary that are necessary to carry out the provisions of this subpart, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

EFFECTIVE DATE NOTE: At 51 FR 26138, July 18, 1986, §1260.202 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1260.203 Confidential treatment.

All information obtained from such books, records or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

MISCELLANEOUS

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §§ 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

§ 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1260.213 Removal.

If any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to the Secretary that that person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1260.214 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a qualified State beef council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1260.215 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, ensure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1260.216 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to the Act and this part, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.217 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof of other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

SOURCE: 53 FR 5754, Feb. 26, 1988, unless otherwise noted.

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in subpart A of this part.

§ 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the

exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board or QSBC on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board or QSBC will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board or QSBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.

(f) The person responsible for collecting and remitting the assessment shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board or QSBC.

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cattle or beef and beef products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments

collected by Customs on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

[70 FR 2762, Jan. 14, 2005, as amended at 80 FR 82034, Dec. 31, 2015]

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to the producer's proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraphs (b), (c), and (f) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1-per-head of cattle purchased and shall be responsible for remitting assessments to the QSBC or the Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purposes of this subpart, a producer marketing cattle of the producer's own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed in the following chart there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, except as provided for in paragraph (f) of this section, collect assessments due as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/ packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales [1]
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	B	B	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Nevada	B	B	B	B	B
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B

State	Sales through auction market	Sales to a slaughter/ packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales [1]
Wyoming	CP	B	B	B	B

KEY:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B-CP—Brand inspector has responsibility to collect; however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
[1] For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot, or order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

(f)(1) In lieu of each person making a payment to a producer for cattle purchased in the United States, producers are provided the option in accordance with this paragraph (f) to remit the assessment to the QSBC in the State in which the producer resides. A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the $1-per-head assessment in advance to the QSBC in the State in which the producer resides, provided that the producer fulfills the following requirements:

(i) Transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) The producer, either before or at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance, and remits the assessment to the appropriate QSBC. A copy of the certification form indicating the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

(i) Producer's Name.

(ii) Producer's social security number or Tax I.D. number.

(iii) Producer's address (street address or P.O. Box, city, State, and zip code).

(iv) Signature of Producer.

(v) Producer's State of residence.

(vi) Number of cattle shipped to out of State feedyard under retained ownership.

(vii) Date cattle shipped.

(viii) State where cattle will be on feed.

(ix) Name of feedyard.

(x) Address of feedyard.

(3) Cattle of a producer's own production shall be those cattle which meet all of the following requirements:

(i) The cattle shall be offspring of a producer's own cow herd;

(ii) The cattle shall have been continuously and exclusively under the producer's ownership; and

(iii) The cattle are transported to a feedlot with such producer continuously owning the cattle through the entire feeding phase.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(5) For those cattle for which the assessment has been producer directed

and paid in advance pursuant to paragraph (f)(1) of this section, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 3 years.

(6) Producers shall not receive credit of the assessment required to be paid pursuant to paragraph (f)(1) of this section for those cattle lost because of death.

[53 FR 5754, Feb. 26, 1988, as amended at 67 FR 61766, Oct. 2, 2002]

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports.* Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances.* The remitting person shall remit all assessments to the Qualified State Beef Council or its designee, or, if there is no Qualified State Beef Council, to the Cattlemen's Board at an address designated by the Board, with the report required in paragraph (a) of this section not later than the 15th day of the month following the month in which the cattle were purchased or marketed. All remittances sent to a Qualified State Beef Council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the Qualified State Beef Council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

[53 FR 5754, Feb. 26, 1988, as amended at 79 FR 46936, Aug. 12, 2014; 84 FR 20771, May 13, 2019]

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of the producer's own production for sale, is required to give the producer from whom the collecting person collected an assessment written evidence of payment of the Beef Promotion and Research Assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person:

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef products is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to §1260.116 shall provide the collecting person, on a form approved by the Board and the Secretary, with a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due, except as provided for in paragraphs (c) and (d) of this section.

(c) When the seller of cattle is not physically present during a sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

(d) If the collecting person is a brand inspector, as provided for in §1260.311, the seller of cattle claiming non-producer status shall provide to the brand inspector at the time the physical brand inspection is completed, in lieu of the assessment that would otherwise be due, either: a Statement of Certification of Non-Producer Status or a valid brand inspection certificate which shows collection of the assessment by a brand inspector in a transaction which took place not more than 10 days prior to the sale of the cattle.

(e) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

[53 FR 5754, Feb. 26, 1988, as amended at 66 FR 26784, May 15, 2001]

§1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as Qualified State Beef Councils:

(a) Alabama Cattlemen's Association.
(b) Arizona Beef Council.
(c) Arkansas Beef Council.
(d) California Beef Council.
(e) Colorado Beef Council Authority.
(f) Delaware Beef Advisory Board.
(g) Florida Beef Council, Inc.
(h) Georgia Beef Board, Inc.
(i) Hawaii Beef Industry Council.
(j) Idaho Beef Council.
(k) Illinois Beef Association, Inc.
(l) Indiana Beef Council, Inc.
(m) Iowa Beef Cattle Producers Association/dba/Iowa Beef Industry Council.
(n) Kansas Beef Council.
(o) Kentucky Cattlemen's Association, Inc.
(p) Louisiana Beef Industry Council.
(q) Michigan Beef Industry Commission.
(r) Minnesota Beef Council.
(s) Mississippi Beef Council.
(t) Missouri Beef Industry Council, Inc.
(u) Montana Beef Council.
(v) Nebraska Beef Council.
(w) Nevada Beef Council.
(x) New Jersey Beef Industry Council.
(y) New Mexico Beef Council.
(z) New York Beef Industry Council.
(aa) North Carolina Cattlemen's Beef Council.
(bb) North Dakota Beef Commission.
(cc) Ohio Beef Council.
(dd) Oklahoma Beef Council.
(ee) Oregon Beef Council.
(ff) Pennsylvania Beef Council.
(gg) South Carolina Beef Council.
(hh) South Dakota Beef Industry Council.
(ii) Tennessee Beef Industry Council.
(jj) Texas Beef Council.
(kk) Utah Beef Council.
(ll) Vermont Beef Industry Council.
(mm) Virginia Beef Industry Council.
(nn) Washington State Beef Commission.
(oo) West Virginia Beef Council, Inc.
(pp) Wisconsin Beef Council, Inc.
(qq) Wyoming Beef Council.

[84 FR 20771, May 13, 2019, as amended at 88 FR 76102, Nov. 6, 2023]

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0581–0093.

[79 FR 46964, Aug. 12, 2014]

Subpart C [Reserved]

Subpart D—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

SOURCE: 51 FR 11559, Apr. 4, 1986, unless otherwise noted. Redesignated at 51 FR 26138, July 18, 1986, and further redesignated at 51 FR 35197, Oct. 1, 1986. Redesignated also at 53 FR 9858, Mar. 28, 1988.

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees required for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

Act means the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2918).

Beef means the flesh of cattle.

Beef products means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

Board means the Cattlemen's Beef Promotion and Research Board established under section 5(1) of the Act.

Cattle means live, domesticated bovine animals regardless of age.

Department means the United States Department of Agriculture.

Importer means a person who imports cattle, beef, or beef products from outside the United States.

Livestock and Seed Division means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

Producer means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

State means each of the 50 States.

Unit means a State or combination of States which has a total inventory of not less than 500,000 head of cattle; or importers.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: Requirements for certification.* (1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef, or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organizations or associations.* Any State organization or association which meets the eligibility criteria specified in §1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed ''Application for Certification of Organization or Association,'' Form LS–25, contained in §1260.640. It may be reproduced or additional copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by §1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250; (Telephone: 202/447–2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1260.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file in the Livestock and Seed Division office, where they will be available for inspection.

§§ 1260.580–1260.600 [Reserved]

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581–152 has been assigned.

§ 1260.640 Application for Certification Form.

The following official form, ''Application for Certification of Association or Organization,'' must be completed and submitted to the Department by eligible State organizations or associations seeking certification by the Secretary. This form may be reproduced.

Information is collected in order to determine eligibility of organizations or associations to nominate cattle producers to serve as members of the Board. Application is voluntary and information is held confidential (Beef Promotion and Research Act of 1985).

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

APPLICATION FOR CERTIFICATION OF ORGANIZATION OR ASSOCIATION

Form Approved
OMB NO. 0581-0152
Expires 12-31-88

Organizations or associations must apply for certification by the Secretary to be eligible to participate in the making of nominations of cattle producers to serve as members of the Cattlemen's Beef Promotion and Research Board as provided in the Beef Promotion and Research Act of 1985. Information submitted in response to all items must be complete. Please type or print clearly. Send original only to: *Marketing Programs and Procurement Branch*
Livestock and Seed Division, AMS
U. S. Department of Agriculture, Room 2610-S
Washington, DC 20250

1. NAME AND ADDRESS OF ORGANIZATION *(Street address or P.O. Box No., City, State, ZIP)*

TEL. (AC .....) .....

2. TYPE OF ORGANIZATION (X" one)
☐ Cattle Assoc. ☐ General Farm Organization
☐ Other *(Specify)* .....

3. STATE	4. TOTAL PAID MEMBERSHIP *(Most RECENT FULL calendar year)*	5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION *(Most RECENT FULL calendar year)*	6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS *(Most RECENT FULL calendar year)*
	IN 198__ NO. _____	IN 198__ NO. _____	AS OF JAN. 1, 198__ NO. _____

7. AS EVIDENCE OF THE STABILITY AND PERMANENCY OF THE ORGANIZATION, GIVE:

A. No. of Years in Existence

B. No. of Paid Members during each of the last four calendar years:

	198__	198__	198__	198__
No. →				

C. Other Evidence *(Explain)*

I hereby certify that: (1) a primary or overriding purpose of this organization or association is to promote the economic welfare of cattle producers, and (2) the information provided in response to the above items is true, complete, and correct to the best of my knowledge. The Secretary of Agriculture may examine our books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine this organization's or association's eligibility for certification.

8. NAME AND TITLE OF PERSON COMPLETING THIS APPLICATION *(Type or print)*	9. DATE	10. SIGNATURE

FORM LS-25
(JAN 86)

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION [RESERVED] [NOTE]

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Lamb Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 67 FR 17857, Apr. 11, 2002, unless otherwise noted.

Subpart A—Lamb Promotion, Research, and Information Order

DEFINITIONS

§ 1280.101 Definitions.

Act means the Commodity Promotion, Research, and Information Act

of 1996 (7 U.S.C. 7411–7425; Public Law 104– 127; 110 Stat. 1029, as amended), or any amendments thereto.

Board means the Lamb Promotion, Research, and Information Board established pursuant to §1280.201.

Certified organization means any organization which has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

Conflict of interest means a situation in which a member or employee of a Board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a Board for anything of economic value.

Department means the United States Department of Agriculture.

Exporter means any person who exports domestic live lambs from the United States.

Feeder means any person who acquires ownership of lambs and feeds such lambs in the U.S. until they reach slaughter weight.

First handler means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter. If a producer or feeder markets lamb products directly to consumers, the producer or feeder shall be considered a first handler with respect to such lambs produced by the producer or feeder.

Fiscal period and marketing year mean the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

Information means information and programs that are designed to increase efficiency in producing lambs, to maintain and expand existing markets, and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of lamb and lamb products on a national or international basis. These include:

(1) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, and nutritional attributes of lamb and lamb products; and

(2) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the lamb industry, and activities to enhance the image of lamb.

Lamb means ovine animals of any age, including ewes and rams.

Lamb products means products produced in whole or in part from lamb, including pelts, and excluding wool and wool products.

Market agency means commission merchant, auction market, or livestock market in the business of receiving lambs or lamb products for sale or purchase on commission for or on behalf of a producer, feeder, seedstock producer, or first handler.

Order means an Order issued by the Secretary under §514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

Part means the Lamb Promotion, Research, and Information Order and all rules and regulations issued pursuant to the Act and the Order. The Order shall be a subpart of the Part.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

Producer means any person who owns and produces lambs in the United States for sale.

Producer information means activities designed to provide producers, feeders, and first handlers with information relating to production or marketing efficiencies, development of new markets, program activities, or other information that would facilitate an increase in the demand for lamb or lamb products.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations with emphasis on new marketing strategies, to present a favorable image of U.S. lamb products to the public for the purpose of improving the competitive position of U.S. lamb and lamb products in the marketplace and to stimulate sales.

Referendum means a referendum to be conducted by the Secretary pursuant to the Act whereby producers, feeders, first handlers, and exporters shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting and a majority of volume voting.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of lamb or lamb products.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Seedstock producer means any lamb producer in the U.S. who engages in the production and sale of breeding replacement lambs or semen or embryos.

State means each of the 50 States and the District of Columbia.

Suspend means to issue a rule under § 553 of title 5 U.S.C., to temporarily prevent the operation of an Order or part thereof during a particular period of time specified in the rule.

Terminate means to issue a rule under § 553 of title 5 U.S.C., to cancel permanently the operation of an Order or part thereof beginning on a date certain specified in the rule.

Unit means each State, group of States, or class designation (producers, feeders, first handlers, or seedstock producers) that is represented on the Board.

United States means collectively the 50 States and the District of Columbia.

Wool means fiber from the fleece of a lamb.

Wool products mean products produced, in whole or in part, from wool and products containing wool fiber, excluding pelts.

[86 FR 72514, Dec. 22, 2021]

§§ 1280.102–1280.129 [Reserved]

LAMB PROMOTION, RESEARCH, AND INFORMATION BOARD

§ 1280.201 Establishment and membership.

(a) There is hereby established a Lamb Promotion, Research and Information Board of 13 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(1) *Producers.* There shall be six producer representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. For purposes of nominating and appointing producers to the Board, the United States as defined within this subpart shall be divided into two regions. Each region must be represented by at least two producers. The Secretary will appoint the remaining two producers to ensure that the criteria specified in paragraphs (a)(1)(i), (ii), and (iii) of this section are met. Region 1 shall include the geographic area east of the Mississippi River, which includes the following States: Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, New Jersey, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Michigan, Illinois and Wisconsin. Region 2 shall consist of all States west of the Mississippi River, which includes the following states: Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, Hawaii and Alaska. With regard to appointments to the Board, the Secretary shall ensure that the representation for producers on the Board shall meet the following criteria:

(i) Two producers appointed to the Board shall own annually 100 or less head of lambs;

(ii) One producer shall own annually between 101 and 500 head of lambs; and

(iii) Three producers shall own more than 500 head of lambs annually.

(2) *Feeders.* There shall be three feeder representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. The Secretary will appoint two feeder representatives to ensure that the criteria in paragraphs (a)(2)(i), (ii) and (iii) of this section are met. The third feeder representative will be appointed by the Secretary and will not be chosen or bound by size requirements.

(i) At least one of the feeders appointed to the Board shall feed less than 5,000 head of lambs annually.

(ii) At least one of the feeders appointed to the Board shall feed 5,000 or more head of lambs annually.

(iii) The Secretary shall ensure that the feeders appointed to the Board are not all located in one geographic region as established for producers pursuant to paragraph (a)(1) of this section.

(3) *First handlers.* There shall be three first handler representatives appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(4) *Seedstock producers.* There shall be one seedstock producer appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(b) In soliciting nominations for the Board, the Secretary will request those nominating to identify specific categories in which nominees will qualify.

(c) *Adjustment of membership.* At least once every 5 years, the Board will review the geographical distribution of the United States production of lambs. The review will be conducted using the National Agricultural Statistics Service inventory figures and the Board's annual assessment receipts. If warranted, the Board will recommend to the Secretary that the membership on the Board be adjusted to reflect changes in geographical distribution of domestic lamb production.

§ 1280.202 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations certified under § 1280.206. Certified eligible organizations representing producers, feeders, first handlers, or seedstock producers shall submit to the Secretary at least two nominees for each seat on the Board. If the Secretary determines that a unit is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the unit.

(b) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nomination for subsequent Board members shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1280.205.

(c) When there is more than one certified eligible organization representing the unit or when the Secretary solicits nominations from organizations and persons residing in that unit, they may caucus and jointly nominate, two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, first handler, or seedstock producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any lamb promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

§ 1280.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or the Secretary shall request nominations for a successor pursuant to § 1280.202 and such successor shall be appointed pursuant to § 1280.204.

§ 1280.206 Certification of organizations.

(a) *In General.* The eligibility of State, regional, or national organizations to represent producers, seedstock producers, feeders, and first handlers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established under paragraphs (b) and (c) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for Certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) *Primary Considerations.* The primary considerations in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb or lamb products.

§ 1280.207 Term of office.

(a) The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve proportionately for terms of 1-year, 2-years, and 3-years.

(b) No member may serve more than two consecutive 3-year terms.

(c) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

§ 1280.208 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

§ 1280.209 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.210 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a Chairperson, Vice Chairperson, Secretary/Treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate;

(d) To prepare and submit for the approval of the Secretary, fiscal year budgets in accordance with §1280.212.

(e) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(f) To develop and submit plans and projects to the Secretary for the Secretary's approval, and to enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information (including producer information), or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and,

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(g) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(h) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information (including producer information), designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry;

(n) To provide not less than annually a report to producers, feeders and first

handlers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(o) To invest funds in accordance with § 1280.213.

§ 1280.211 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the lamb industry from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or disparaging to another agricultural commodity.

EXPENSES

§ 1280.212 Budget and expenses.

(a) The Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering, this subpart. The budget shall be submitted before the beginning of each fiscal year, and as frequently as may be necessary thereafter.

(b) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

(c) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(d) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(f) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(g) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year, except for the initial fiscal year. Reimbursements to the Secretary required under paragraph (f) of this section are excluded from this limitation on spending.

§ 1280.213 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a financial institution that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used for any purpose for which the invested funds may be used.

ASSESSMENTS

§ 1280.217 Lamb purchases.

(a) Except as prescribed by regulations approved by the Secretary, each first handler or exporter making payment to a producer, seedstock producer, or feeder for lambs purchased

from such producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder. Each producer, seedstock producer, or feeder shall pay such assessment to the first handler or exporter, at the rate of seven-tenths of a cent ($.007) per pound of live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent ($0.002) in any one year. The Board may recommend any change in the assessment rate to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the FEDERAL REGISTER any proposed changes with interested parties allowed to provide comment.

(b) Except as otherwise specified in this subpart, a person shall not be considered a producer, seedstock producer, or feeder within the meaning of this subpart if;

(1) The person's only share in the proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; or

(2) The person:

(i) Acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party,

(ii) Resold such lambs no later than 10 days from the date on which the person acquired ownership, and

(iii) Certified, as required by regulations recommended by the Board and prescribed by the Secretary, that the requirements of this provision have been satisfied.

(c) Each person processing or causing to be processed lambs or lamb products of that person's own production and marketing such lambs or lamb products, shall pay an assessment on such lambs or lamb products on the live weight of the lamb at the time of slaughter at the rate established in subparagraph (a) of this section. In addition, pursuant to §1280.108, such an individual is considered a first handler and is required by §1280.219 to pay an additional assessment of $0.42 per head. As the first handler, the individual must remit the total amount of assessments to the Board.

(d) A market agency shall collect an assessment from the producer, seedstock producer, feeder, or first handler and remit the collected assessment to the Board. Any person who pays more than one assessment on the same lamb may be eligible for a refund by submitting a request on a form provided by the Board.

(e) The collection of assessments pursuant to §1280.217, §1280.218, and §1280.219 shall begin with respect to lambs purchased, or lambs or lamb products marketed on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(f) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in §1280.223 and §1280.225 shall be mailed to the location designated by the Board.

[67 FR 17857, Apr. 11, 2002, as amended at 78 FR 28123, May 14, 2013; 86 FR 72515, Dec. 22, 2021]

§1280.218 Exporter.

Each person exporting live lambs or lamb products, including an exporter directly exporting his or her own lambs or lamb products, shall remit to the Board an assessment at the rate established in §1280.217(a) by the 15th day of the month following the month in which the live lambs were purchased for slaughter and export or live export.

[86 FR 72515, Dec. 22, 2021]

§1280.219 First handlers.

Each first handler, in addition to remitting the assessment collected pursuant to §1280.217, shall pay an assessment equal to forty-two cents ($0.42) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. The rates of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the assessments collected pursuant to §1280.217.

[78 FR 28123, May 14, 2013]

§ 1280.220 Collections.

(a) Each first handler, market agency, and exporter responsible for the collection of assessments under this subpart shall remit assessments to the Board by the 15th day of the month following the month in which the lambs were purchased for slaughter or export.

(b) If a first handler marketed lambs or lamb products directly to consumers, assessments shall be remitted to the Board by the 15th day of the month following the month in which the lambs or lamb products were marketed, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise.

(c) *Late payment charges.* Any unpaid assessments due to the Board pursuant to §1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart, because of a person's failure to timely submit a report to the Board, shall be considered to have been payable by the date it would have been due if the report had been timely filed. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(d) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

[67 FR 17857, Apr. 11, 2002, as amended at 86 FR 72515, Dec. 22, 2021]

§ 1280.221 Prohibition on use of funds.

No funds collected by the Board under this subpart shall be used to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to this subpart. A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of lamb or lamb products or disparage a competing product.

REPORTS, BOOKS, AND RECORDS

§ 1280.222 Books and Records of Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe,

(b) Prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.223 Reports.

Each first handler required to remit assessments to the Board for live lambs pursuant to §1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Board information pursuant to regulations recommended by the Board and prescribed by the Secretary. Such information may include but is not limited to the following:

(a) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(b) The number of lambs exported; the total weight in pounds of lambs exported;

(c) The amount of assessment remitted;

(d) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate;

(e) The date any assessment was paid.

§ 1280.224 Periodic evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every 5 years, authorize and fund, from funds otherwise available to

the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1280.225 Books and records of persons.

(a) Each first handler, exporter of lambs, and market agency shall maintain and make available for inspection such books and records as may be required by regulations recommended by the Board and prescribed by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Document evidencing payment of assessments. Each person, including first handlers, exporters and market agencies, responsible for collecting an assessment paid pursuant to this subpart is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lamb sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.226 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding person paying producers, seedstock producers, feeders, first handlers, or exporters that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

§ 1280.227 Confidentiality.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, seedstock producers, feeders, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1280.228 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.229 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1280.230 Separability.

If any provision of the subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1280.231 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale leasing, franchising, or other uses of such patents, copyrights, inventions, or publication, inure to the benefit of the Board. Upon termination of this subpart, § 1280.235 shall apply to determine the disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1280.232 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1280.233 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1280.217, § 1280.218, and § 1280.219 who, during a representative period determined by the Secretary, have engaged in the production, feeding, handling, or slaughter of lamb; or the exportation of lamb.

(1) *Time for referendum.* The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) *Approval of part.* This part may be approved in a referendum by a majority of those persons voting for approval who also represent a majority of the volume of lamb produced, fed, slaughtered, handled, and exported.

(b) *Subsequent referenda.* The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board established pursuant to § 1280.201; or

(3) At the request of 10 percent or more of the lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) *Other referenda.* The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote.

(d) *Costs of referenda.* The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) *Manner of conducting referenda.* A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

(1) *Voting.* Eligible voters may vote by mail ballot in the referendum or in

person if so prescribed by the Secretary.

(2) *Notice.* Not later than 30 days before a referendum is conducted under this section with respect to this part, the Secretary shall notify the eligible voters, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this part.

§ 1280.234 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that this part, subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act,

(b) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1280.235 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property owned, in possession of or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the same obligations as imposed upon the Board and the trustees.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the lamb research or information programs hitherto authorized.

§ 1280.236 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or of any person, with respect to any such violation.

§ 1280.237 Rules and Regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

§ 1280.238 OMB Control Numbers.

The control number for the information requirements assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is 0581–0198, except that the OMB control number for the nominee background form is 0505–0001.

Subparts B [Reserved]

Subpart C—Rules and Regulations

SOURCE: 67 FR 39253, June 7, 2002, unless otherwise noted.

§ 1280.401 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1280.402 Assessments.

(a) *Sharing proceeds of sale.* If more than one producer, feeder, or seedstock producer shares the proceeds received for the lamb or lamb products sold, each such producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share of the proceeds.

(b) *Market agency.* A market agency will be required to collect an assessment from the producer, feeder, seedstock producer, or first handler and remit the collected assessment to the Board.

(c) *Failure to collect.* Failure of a person to collect the assessment on lambs purchased from a producer, feeder, or seedstock producer shall not relieve the producer, feeder, or seedstock producer of their obligation to pay the assessment and to remit the assessment to the Secretary.

(d) *Death, bankruptcy, receivership or incapacity to act.* In the event of a producer's, feeder's, seedstock producer's, or exporter's death, bankruptcy, receivership or incapacity to act, the representative of such producer's, feeder's, seedstock producer's, or exporter's estate, the person acting on behalf of creditors or other person acting in such person's stead, shall be considered the producer, feeder, or seedstock producer and shall be required to pay an assessment or collect an assessment.

(e) *Remittance of assessments.* (1) Assessments shall be remitted to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, 23029 Network Place, Chicago, Illinois 60673–1230, with a ''Monthly Remittance Report'' form not later than the 15th day of the following month in which lambs or lamb products were purchased for slaughter or export, or marketed.

(2) In cases where a producer or feeder sells lambs as part of a custom slaughter operation, the producer or feeder shall be responsible for remitting the assessments pursuant to § 1280.219.

(3) Each person processing or causing to be processed lamb or lamb products of that person's own production and marketing such lamb or lamb products shall be responsible for remitting the assessments pursuant to § 1280.217(c).

(4) Late payment charges. Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Any assessment received at a date later than the date prescribed by this part, because of a persons failure to submit a timely report to the Secretary, shall be considered to have been payable by the date it would have been due if the report had been filed in a timely manner. The timeliness of a payment to the Secretary shall be based on the applicable postmark date or the date actually received by the Secretary, whichever is earlier.

(5) Weekends and holidays. If the 15th day of the month falls on a Saturday, Sunday, or a federally recognized holiday then the required reports and assessment will be due the next business day in order to avoid late payment charges.

(f) *Non-producer status for certain transactions.* (1) Each person seeking non-producer status pursuant to §1280.217 shall provide the person remitting the assessment a Statement of Certification of Non-Producer Status form (LS–78).

(2) A copy of the Statement of Certification of Non-Producer Status shall be forwarded by the person collecting the assessment to the Secretary.

[67 FR 39253, June 7, 2002, as amended at 86 FR 72516, Dec. 22, 2021]

§ 1280.404 Reporting.

(a) Each first handler required to submit assessments for live lambs pursuant to §1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Secretary the following information on form LS–81.

(1) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(2) The number of lambs exported and the total weight in pounds of lambs exported;

(3) The amount of assessment remitted;

(4) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) *Reporting periods.* For reports required pursuant to §1280.223, each calendar month shall be a reporting period.

§ 1280.405 Books and records.

(a) Each first handler, exporter of lambs, and market agency shall maintain and, during normal business hours, make available for inspection by representatives of the Secretary, such books and records as are necessary to carry out the provisions of this part, including such books and records as are necessary to verify any required reports.

(b) *Documents evidencing payments of assessments.* Each person, including first handlers, exporters, and market agencies, responsible for collecting an assessment paid pursuant to this part is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid. Such written evidence serving as a receipt shall include the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lambs sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Secretary may require.

§ 1280.406 Exemption.

(a) A producer, seed stock producer, feeder, handler, or exporter who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer, handler, or exporter regardless of whether the agricultural commodity subject to the exemption is produced, handled, or exported by a person that also produces, handles, or exports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer, handler, or exporter maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any person so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the person shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces, handles, or exports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a person complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the applicant within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the exemption.

[70 FR 2762, Jan. 14, 2005, as amended at 80 FR 82035, Dec. 31, 2015]

Subpart D [Reserved]

Subpart E—Procedures To Request a Referendum

DEFINITIONS

SOURCE: 69 FR 77572, Dec. 27, 2004, unless otherwise noted.

§ 1280.601 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1280.602 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1280.603 Administrator, FSA.

Administrator, *FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1280.604 Eligibility.

Eligibility is defined as any person subject to the assessment who during the representative period determined by the Secretary have engaged in the production, feeding, or slaughtering of lambs. Such persons are eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers,

seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

§ 1280.605 Farm Service Agency.

Farm Service Agency also referred to as ''FSA'' means the Farm Service Agency of USDA.

§ 1280.606 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1280.607 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1280.608 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1280.609 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

§ 1280.610 Public notice.

Public notice means not later than 30-days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under §518 of the Act.

§ 1280.611 Representative period.

Representative period means the period designated by the Secretary pursuant to §518 of the Act.

§ 1280.612 Volume of production.

(a) For producers and seedstock producers, the term *volume of production* means the total number of live domestic lambs owned and produced during the most recent calendar year.

(b) For feeders, *volume of production* means the total number of lambs owned and fed during the most recent calendar year.

(c) For first handlers, *volume of production* means the total number of lambs slaughtered during the most recent calendar year.

§ 1280.613 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

PROCEDURES

§ 1280.620 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices.

(b) The Secretary shall determine if at least a majority of those persons voting for approval who also represent a majority of the volume of lambs owned and produced; owned and fed; or slaughtered, favor the continuance of this part.

§ 1280.621 Supervision of the process for conducting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

§ 1280.622 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production, feeding, or

slaughtering of lambs is eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

(b) *Proxy Registration.* (1) Proxy registration is not authorized, except that an officer or employee of a corporate producer, feeder, seedstock producer, or first handler, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer, feeder, seedstock producer, or first handler entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.*, spouse, sharecrop lease, etc.).

(2) Any individual, who votes on behalf of any producer, feeder, seedstock producer, or first handler entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA office, the person voting may be required to submit adequate evidence of such authority.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production, feeding, or slaughtering of lambs during the representative period as a producer, feeder, seedstock producer, or first handler entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

§ 1280.623 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp.*

(c) Each eligible person shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, slaughtering, of lambs in more than one county will vote in the county FSA office where the person does most of his or her business.

§ 1280.624 Facilities.

Each county FSA office will provide:

(a) a voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit their ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) a holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

§ 1280.625 Certification and referendum form ballot form.

Form LS–86 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote ''yes'' or ''no'' to continue the program, enter the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a representative period and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production, feeding, or slaughtering of lambs during the representative period.

The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production, feeding, or slaughtering of lambs during the representative period and that the volume of production voted is true and accurate.

§ 1280.626 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete form LS–86 in its entirety, sign it, and provide evidence that they were engaged in the production, feeding, or slaughtering of lambs during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county, and telephone number. The person shall sign and certify on form LS–86 that:

(i) The person was engaged in the production, feeding, or slaughtering of lambs during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(iv) The volume of production listed on the ballot is true and accurate.

(2) Only a completed and signed form LS–86 accompanied by supporting documentation showing that the person was engaged in the production, feeding, or slaughter of lambs during the representative period shall be considered a valid vote.

(b) To vote, eligible persons may obtain form LS–86 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed form LS–86 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, or slaughtering of lambs in more than one county will vote in the county FSA office where the person does most of his or her business. Forms obtained via the Internet will be located at *www.ams.usda.gov/lsmarketingprograms.*

(c) A completed and signed form LS–86 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–86 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–86 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period.

(d) Persons who obtain form LS–86 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation.

[69 FR 77572, Dec. 27, 2004, as amended at 73 FR 76194, Dec. 16, 2008]

§ 1280.627 Canvassing voting ballots.

(a) Canvassing of form LS–86 shall take place at the county FSA offices on the 6th business day following the final day of the voting period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present

for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Form LS–86 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA to vote by completing form LS–86 in its entirety, signing it, voting volume of production, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production, feeding, or slaughtering of lambs during the representative period. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the person's eligibility and notify the person of the decision.

(d) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS–86 is not signed or all required information has not been provided;

(2) Form LS–86 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS–86 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS–86 and supporting documentation returned by mail was not received in the county FSA office by the 5th business day following the final day of the voting period;

(5) Form LS–86 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS–86 and supporting documentation not returned to the appropriate county FSA office.

§ 1280.628 Counting ballots.

(a) Form LS–86 shall be counted by county FSA offices on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Volume of production voted favoring the continuation of the Order;

(5) Volume of production voted not favoring the continuation of the Order; and

(6) Number of invalid ballots.

§ 1280.629 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after

notification by FSA that the final results have been released by the Secretary.

§ 1280.630 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1280.631 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official results at the following Web site: *http://www.ams.usda.gov/LSMarketingPrograms* or such other Web site as announced by the Administrator of AMS. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

[69 FR 77572, Dec. 27, 2004, as amended at 73 FR 76194, Dec. 16, 2008]

§ 1280.632 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Lamb Checkoff Program Referendum,'' all of the form LS–86's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1280.633 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

§ 1280.634 Confidentiality.

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

PART 1290 [RESERVED]

PART 1292–1299 [RESERVED]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes to chapter XIV appear at 60 FR 1710, Jan. 5, 1995, and 60 FR 64297, Dec. 15, 1995.

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CROSS REFERENCE: For regulations relative to standards, inspections, and marketing practices, see Chapter I of this title.

SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

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AUTHORITY: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5; and Title I, Pub. L. 115–123.

SOURCE: 73 FR 79273, Dec. 29, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) This part, except as otherwise noted, is applicable to all of the following programs and any other programs as specified in individual program regulations of this chapter:

(1) The Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs, part 1412 of this chapter;

(2) The Price Support programs in parts 1421, 1427, and 1434 of this chapter;

(3) The Conservation Reserve Program (CRP), part 1410 of this chapter;

(4) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;

(5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program (ELAP), part 1416 of this chapter;

(6) The Tree Assistance Program (TAP), part 1416 of this chapter;

(7) The Natural Resources Conservation Service (NRCS) conservation programs of this title including the Agricultural Management Assistance (AMA) program, Conservation Stewardship Program (CSP), Environmental Quality Incentives Program (EQIP),

and Agricultural Conservation Easement Program (ACEP); and

(8) The Emergency Conservation Program (ECP) and Emergency Forest Restoration Program (EFRP) in part 701 of this title.

(9) Subparts C and G of this part do not apply to the programs listed in paragraphs (a)(3) through (8) of this section.

(b) This part will apply to the programs specified in:

(1) Paragraphs (a)(1), (2), (4), and (7) of this section on a crop year basis;

(2) Paragraph (a)(3) of this section on a fiscal year basis;

(3) Paragraphs (a)(5) and (6) of this section on a calendar year basis;

(4) Paragraph (a)(7) of this section when funding is available; and

(5) Paragraph (a)(8) of this section on a per disaster event basis.

(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as specified in individual program regulations in this chapter.

(d) Where more than one provision of this part may apply, the provision that is most restrictive on the program participant will be applied.

(e) The payment limitations of this part are not applicable to:

(1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary, and

(2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

TABLE 1 TO PARAGRAPH (f)

Payment or benefit	Limitation per person or legal entity ($)
(1) Price Loss Coverage, Agriculture Risk Coverage payments (other than Peanuts).	125,000 per program year.
(2) Price Loss Coverage and Agriculture Risk Coverage payments for Peanuts.	125,000 per program year.
(3) CRP annual rental payments	50,000 per program year.
(4) NAP payments	
(i) basic 50/55 NAP coverage	125,000 per crop year.
(ii) Buy-up NAP coverage	300,000 per crop year.
(5) LFP	125,000 per program year.
(6) CSP[1]	200,000.
(7) EQIP[2]	450,000.
(8) AMA program	50,000 per fiscal year.
(9) ECP	500,000 per disaster event.
(10) EFRP	500,000 per disaster event.

[1] The $200,000 limitation is the total amount a person or legal entity can receive directly or indirectly in the aggregate under all CSP contracts entered into during fiscal years 2019 through 2023.

[2] The $450,000 limitation is the total amount of cost share and incentive payments a person or legal entity can receive directly or indirectly, under all EQIP contracts (excluding Conservation Incentive Contracts) in the aggregate entered into during the period of either: Fiscal years 2014 through 2018, or fiscal years 2019 through 2023.

[79 FR 21096, Apr. 14, 2014, as amended at 80 FR 119, Jan. 2, 2015; 80 FR 78128, Dec. 16, 2015; 83 FR 49463, Oct. 2, 2018; 85 FR 52036, Aug. 24, 2020]

§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (referred to as ''State committee'' and ''county committee,'' respectively).

(b) State executive directors, county executive directors, and State and

county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by the county committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by the county committee that is not in accordance with this part or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this part to a State or county committee precludes the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial payment eligibility determinations will be made within 60 days after the required forms and any other supporting documentation needed in making the determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for the applicable year.

(g) Initial determinations concerning the provisions of this part will be made by the FSA State office with respect to any farm operating plan that is for a joint operation with six or more members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted at any time to determine compliance with applicable statutes and regulations. The completion of the reviews is not subject to the time constraints specified in paragraph (f) of this section.

(i) The Deputy Administrator will periodically monitor the status of completion of assigned compliance reviews and take any actions deemed appropriate to ensure timely completion of reviews for payment eligibility and payment limitation compliance purposes.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 80 FR 78128, Dec. 16, 2015; 85 FR 52036, Aug. 24, 2020]

§ 1400.3 Definitions.

(a) The terms defined in part 718 of this title are applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this part:

Active personal management means personally providing and participating in activities considered critical to the profitability of the farming operation and performed under one or more of the following categories:

(1) Capital, which includes:

(i) Arranging financing and managing capital;

(ii) Acquiring equipment;

(iii) Acquiring land or negotiating leases;

(iv) Managing insurance; and

(v) Managing participation in USDA programs;

(2) Labor, which includes hiring and managing of hired labor; and

(3) Agronomics and marketing, which includes:

(i) Selecting crops and making planting decisions;

(ii) Acquiring and purchasing crop inputs;

(iii) Managing crops (that is, whatever managerial decisions are needed with respect to keeping the growing crops living and healthy—soil fertility and fertilization, weed control, insect control, irrigation if applicable) and making harvest decisions; and

(iv) Pricing and marketing of crop production.

Administrator means the Administrator of the Farm Service Agency including any designee of the Administrator.

Alien means any person not a citizen or national of the United States.

Attribution means the combination of any payment made directly to a person or legal entity with the person's or legal entity's pro rata direct and indirect interest in payments received by a legal entity, joint venture, or general partnership.

Average Adjusted Gross Income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year.

Capital means the funding provided by a person or legal entity to the farming operation for the operation to conduct farming activities. In determining whether a person or legal entity has independently contributed capital, in the form of funding, to the farming operation, the capital must have been derived from a fund or account separate and distinct from that of any other person or legal entity with an interest in the farming operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution must be a direct out-of-pocket input of a specified sum or an amount borrowed by the person or legal entity and does not include advance program payments.

Chief means the Chief of the Natural Resources Conservation Service including any designee of the Chief (also referred to in this part as NRCS Chief).

Contribution means providing land, capital, or equipment assets, and the actions of providing active personal labor or active personal management to a farming operation in exchange for, or with the expectation of, deriving benefit based solely on the success of the farming operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency including any designee.

Environmentally sensitive land of special significance means land offered for enrollment or adjacent to the land offered for enrollment that contains, or through enrollment will address, critical resources including, but not limited to:

(1) Habitat for threatened, endangered, or at-risk species;

(2) Historical or cultural resources;

(3) Native grasslands;

(4) Unique wetlands;

(5) Rare, unique, or related soils; and

(6) Critical groundwater recharge areas.

Equipment means the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on CRP acreages and those needed to conduct livestock operations. The equipment may be leased from any source. If the equipment is leased from another person or legal entity with an interest in the farming operation, the equipment must be leased at a fair market value.

Family member means a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, first cousin, niece, nephew, spouse, or otherwise by marriage.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation that is eligible to receive payments, directly or indirectly, under one or more of the programs specified in §1400.1. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more joint operations.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Interest in the farming operation means any of the following:

(1) Owner, lessor, or lessee of the land in the farming operation;

(2) An interest in the agricultural products, commodities, or livestock produced by the farming operation; or

(3) A member of a joint operation that is an owner, lessor, or lessee of the land in the farming operation or has an interest in the agricultural products, commodities, or livestock produced by the farming operation.

Irrevocable trust means a trust as specified in this definition. Any trust not meeting this definition will be considered a revocable trust. A trust may be considered to be an irrevocable trust only if:

(1) The trust cannot be modified or terminated by the grantor;

(2) The grantor has no future, contingent, or remainder interest in the corpus of the trust; and

(3) The trust agreement does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

Joint operation means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Land means farmland that meets the specific requirements of the applicable program. The land may be leased from any source. If the land is leased from another person or legal entity with an interest in the farming operation, the land must be leased at a fair market value.

Lawful alien means any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses appropriate valid credentials issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Legal entity means an entity created under Federal or State law and that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Livestock means those animals included in §1416.304(a) of this chapter.

Payment means:

(1) Payments made in accordance with part 1412 of this chapter or successor regulation of this chapter;

(2) CRP annual rental payments made in accordance with part 1410 of this chapter or successor regulation of this chapter;

(3) NAP payments made in accordance with part 1437 of this chapter or successor regulation of this chapter;

(4) ELAP, LIP, LFP, and TAP payments made in accordance with part 1416 of this chapter or successor regulations of this chapter:

(5) Price support payments made in accordance with parts 1421 and 1434 of this chapter; and

(6) For other programs, any payments designated in individual program regulations in this chapter.

Person means an individual, natural person and does not include a legal entity.

Public school means a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

Secretary means the Secretary of the United States Department of Agriculture.

Sharecropper means a person who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of the crop in return for work.

Significant contribution means the provision of the following to a farming operation:

(i)(A) For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person's or legal entity's commensurate share of the total:

(*1*) Value of the capital necessary to conduct the farming operation;

(*2*) Rental value of the land necessary to conduct the farming operation; or

(*3*) Rental value of the equipment necessary to conduct the farming operation; or

(B) If the contribution by a person or legal entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the person's or legal entity's commensurate share of the total value of the farming operation;

(ii) For active personal labor, an amount contributed by a person to the farming operation that is described by the smaller of the following:

(A) 1,000 hours per calendar year; or

(B) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such person's or legal entity's commensurate share in the farming operation;

(iii) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the person's or legal entity's commensurate share in the farming operation; and

(iv) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (ii) and (iii) of this definition, a combination of active personal labor and active personal management that, when made together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (ii) and (iii) of this definition.

Substantial amount of active personal labor means the provision of active personal labor to a farming operation in an amount described by the smaller of the following:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to the person's or legal entity's commensurate share in the farming operation.

Total value of the farming operation means the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 52037, Aug. 24, 2020; 85 FR 73602, Nov. 19, 2020]

§ 1400.4 Indian Tribe.

Provisions of this part do not apply to Indian tribes as defined in § 1400.3.

§ 1400.5 Denial of program benefits.

(a) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part.

(b) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part and adopts or participates in adopting a scheme or device designed to evade this part, or that has the effect of evading this part. Examples of acts may include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive. Examples of business arrangements or acts include, but are not limited to the following:

(i) No crops are grown or agricultural commodities produced by the represented operation;

(ii) The represented operation has no appreciable assets;

(iii) The only source of capital for the operation is the program payments; or

(iv) The represented operation exists only for the receipt of program payments.

(c) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to

evade, or that has the purpose of evading, the provisions of 7 U.S.C. 1308, 1308–1, or 1308–3, as amended, the person or legal entity will be ineligible to receive payments under the programs specified in §1400.1 in the year the scheme or device was perpetrated or adopted and the succeeding year.

(d) A person or legal entity that lies or perpetuates fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a 5-year denial of all program benefits. Examples of equally serious actions include, but are not limited to:

(1) Knowingly engaged in, or aided in the creation of a fraudulent document;

(2) Failed to disclose material information relevant to the administration of the provisions of this part, or

(3) Any other actions of a person or legal entity determined by the Deputy Administrator as designed or intended to circumvent the provisions of this subpart.

(e) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance to the interest held by the person or legal entity in any other legal entity or joint operations and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

§1400.6 Joint and several liability.

(a) Any legal entity, including joint operations, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other equally serious actions to evade the payment limitation provisions in this part, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other examples of equally serious actions mentioned in this section or in §1400.5, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the payment limitation and payment eligibility provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 85 FR 52038, Aug. 24, 2020]

§1400.7 Revocable trust.

A revocable trust and the grantor will be considered to be the same person under this part.

[85 FR 52038, Aug. 24, 2020]

§1400.8 Equitable treatment.

(a) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the Administrator may be accepted as meeting the requirements of this part to the extent the Administrator deems necessary to provide fair and equitable treatment to the person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to the person or legal entity.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

§1400.9 Appeals.

(a) A person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth in part 780 of this title. With respect to the appeals, the applicable reviewing authority will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) will not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

§ 1400.10 Notification of interests.

(a) To facilitate administration of subparts B, C, E, and F of this part for programs specified in §1400.1, or any other program as provided in individual program regulations in this chapter, a person or legal entity must provide information in the manner as prescribed by the Deputy Administrator.

(b) The information required to be submitted under paragraph (a) of this section must include:

(1) The name, address, valid taxpayer identification number, and ownership share of each person, or the name, address, valid taxpayer identification number, and ownership share of each legal entity, that holds or acquires an ownership interest in the legal entity; and

(2) The name, address, valid taxpayer identification number, and ownership share of each legal entity in which the person or legal entity holds an ownership interest.

(c) Except as provided in paragraph (d) of this section, payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of less than 10 percent at, or above the fourth level of ownership in the business structure is not provided to USDA. Additionally, A legal entity will not be eligible to receive payment when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater at, or above the fourth level of ownership in the business structure is not provided to USDA.

(d) In order to be eligible to receive any payment specified in §1400.1(a)(7) or as provided by the Natural Resources Conservation Service in individual program regulations in this chapter, a person or legal entity must provide information in the manner as prescribed by the Deputy Administrator as identified in paragraph (b) of this section. Paragraph (c) of this section does not apply to the identified Natural Resources Conservation Service programs (programs specified in §1400.1(a)(7) or any other Natural Resources Conservation Service program as specified in the individual program regulations in this chapter).

[87 FR 1890, Jan. 11, 2023]

Subpart B—Payment Limitation

§ 1400.100 [Reserved]

§ 1400.101 Minor children.

(a) Except as provided in paragraph (b) of this section, payments received by a child under 18 years of age as of June 1 of the applicable crop, program, or fiscal year, including the person who is the beneficiary of a trust or who is an heir of an estate, will be attributed for the entire crop, program, or fiscal year to the parent receiving the greater amount of program payments subject to this part or to any court-appointed person such as a guardian or conservator who is responsible for the minor.

(b) Payments received by a minor will not be attributed to the minor's

parent or to any court-appointed person such as a guardian or conservator who is responsible for the minor if all of the following apply:

(1) The minor is a producer on a farm and the minor's parents or any court-appointed person such as guardian or conservator who is responsible for the minor, does not have any interest in the farm;

(2) The minor has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor, and the minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; and

(3) The minor does not live in the same household as the minor's parents and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor and

(ii) Ownership of the farm is vested in the minor.

(c) A person will be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change the person's status as a minor.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 85 FR 52038, Aug. 24, 2020]

§ 1400.102 States, political subdivisions, and agencies thereof.

(a) A State, political subdivision, and agency thereof, is not eligible for payments or benefits under programs specified in §1400.1, unless the exception provided in paragraph (b) of this section applies.

(b) Subject to the limitation in paragraph (c) of this section, a State, political subdivision, and any agency thereof, may receive payments or benefits under programs specified in §1400.1(a)(1) if both of the following apply:

(1) The land for which payments are received is owned by the State, political subdivision, or agency thereof and

(2) The payments are used solely for the support of public schools;

(c) The total payments described in paragraph (b) of this section cannot exceed $500,000 annually except for States with a population less than 1,500,000, as established by the most recent U.S. Census Bureau annual estimate of the State's resident population.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 85 FR 52038, Aug. 24, 2020]

§ 1400.103 Charitable organizations.

(a) A charitable organization, including a club, society, fraternal organization, or religious organization will be considered a separate legal entity for payment limitation purposes to the extent that the entity is independently engaged in the production of crops, agricultural commodities, or livestock, except where the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over the organization.

(b) If the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over the charitable organization, payments to the charitable organization will be attributed to the parent organization.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52038, Aug. 24, 2020]

§ 1400.104 Changes in farming operations.

(a) Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following will be considered to be a substantive change in the farming operation:

(1) The addition of a family member to a farming operation in accordance with §1400.208, except that the addition will not affect the status of any other person or legal entity that is added to the farming operation; or

(2) With respect to a landowner only, a change from a cash rent to a share rent; or

(3) An increase through the acquisition of land used for agricultural production not previously involved in the farming operation of at least 20 percent or more in the total land involved in the farming operation.

(i) For the purpose of payment limitations, the increase in agricultural land will be considered an applicable

bona fide and substantive change for the increase of only one person or legal entity to the farming operation, unless;

(ii) A representative of the State FSA office determines, based on the magnitude and complexity of the change represented, the increase in agricultural land supports additional persons or legal entities to the farming operation; or

(4) A change in ownership by sale or gift of equipment from a person or legal entity previously engaged in a farming operation to a person or legal entity that has not been involved in the operation. The sale or gift of equipment will be considered to be bona fide and substantive only if:

(i) The transferred amount of the equipment is commensurate with the new person's or legal entity's share of the farming operation;

(ii) The sale or gift of the equipment was based on the equipment's fair market value;

(iii) The former owner of the equipment has no direct or indirect control over the equipment;

(iv) The transaction was not financed by the former owner; and

(v) Preference was not given to the former owner to re-purchase the equipment at a later date; or

(5) A change in ownership by sale or gift of land or livestock from a person or legal entity who previously has been engaged in a farming operation to a person or legal entity that has not been involved in the operation. The sale or gift of land or livestock will be considered to be bona fide and substantive only if:

(i) The transferred amount of the land or livestock is commensurate with the new person's or legal entity's share of the farming operation;

(ii) The sale or gift of land or livestock was based on land's or livestock's fair market value;

(iii) The former owner of the land or livestock has no direct or indirect control over the land or livestock;

(iv) The transaction was not financed by the former owner; and

(v) Preference was not given to the former owner to re-purchase the land or livestock at a later date.

(b) Unless the requirements in paragraph (a) of this section are met, the increase in persons in the farming operation will not be recognized for payment limitation purposes and the additional persons or legal entities are not eligible for program payment identified in §1400.1 otherwise resulting from the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 899, Jan. 7, 2010; 85 FR 52038, Aug. 24, 2020]

§ 1400.105 Attribution of payments.

(a) A payment made directly to a person or legal entity will be combined with the pro rata interest of the person or legal entity in payments received by a legal entity in which the person or legal entity has a direct or indirect ownership interest, unless the payments of the legal entity have been reduced by the pro rata share of the person or legal entity.

(b) A payment made to a legal entity will be attributed to those persons who have a direct and indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the pro rata share of the person.

(c) Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-tier or payment legal entity;

(2)(i) Second level of ownership—any payment made to a first-tier legal entity that is owned in whole or in part by another legal entity (referred to as a second-tier legal entity) will be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity;

(ii) If the second-tier legal entity is owned in whole or in part by a person, the amount of the payment made to the first-tier legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(3) Third and fourth levels—except as provided in paragraph (2)(ii) of this section, any payments made to a legal entity at the third and fourth tiers of ownership will be attributed in the same manner as specified in paragraph (2)(i) of this section.

(4) Fourth-tier ownership—if the fourth-tier of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-tier or payment legal entity in the amount that represents the indirect ownership in the first-tier or payment legal entity by the fourth-tier legal entity.

(d) For purposes of administering direct attribution, and to determine a person's ownership interest in a legal entity that receives a payment subject to limitation; the ownership interest on June 1 of each year will be used.

(1) If the change in ownership interest is due to the death of an interest holder in the legal entity or the legal entity did not exist on June 1 of the applicable year, the Deputy Administrator may determine that a change after June 1 is considered relevant or effective for the current year.

(2) Changes that occur after June 1 cannot be used to increase the amount of program payments a legal entity, or its members, is eligible to receive directly or indirectly for the applicable year.

(e) Direct attribution of payments is not applicable to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association. The payments will instead be attributed to the producers as persons.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.106 Payment limits.

(a) Direct or indirect payments made to a person or legal entity will not exceed the amounts specified in subpart A of this part and will be determined in accordance with § 1400.105.

(b) Payments made to a joint operation cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than joint operations, that comprise the ownership of the joint operation.

(c) Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has otherwise reached the applicable maximum payment limitation.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

Subpart C—Payment Eligibility

§ 1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.

(a) To be considered eligible to receive payments with respect to a particular farming operation, a person or legal entity must be actively engaged in farming with respect to the operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the person or legal entity:

(1) Independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(c) All of the following factors will be taken into consideration in determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, or a combination of capital, equipment, or land, to the farming operation:

(1) A separate and distinct interest in the land, crop, and livestock involved in the farming operation;

(2) The demonstration of separate and total responsibility for the interest in the land, crop, and livestock in the farming operation; and

(3) All funds and business accounts of the farming operation are separate from that of any other person and legal entity.

(d) In determining if the person or legal entity is independently and separately contributing a significant amount of active personal labor or active personal management, all of the following factors will be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area;

(3) The total amount of labor and management necessary for the farming operation in the area; and

(4) Whether the person or legal entity receives compensation for the labor and management activities.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.202 Persons.

(a) A person will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The person independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

(c) If a farming operation is conducted by a person, and the capital, land, or equipment is contributed by the person, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1)(i) of this section, must be contributed directly by the person and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by any other person, joint operation, or legal entity that has an interest in the farming operation; and

(2) To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if acquired as a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.203 Joint operations.

(a) A member of a joint operation will be considered to be actively engaged in farming with respect to a farming operation if the member:

(1) Makes a significant contribution of:

(i) Capital, equipment, or land or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management, and that are:

(A) Performed on a regular basis,

(B) Identifiable and documentable, and

(C) Separate and distinct from the contributions of any other member of the farming operation;

(2) Has a share of the profits or losses from the farming operation commensurate with the member's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a

loss, with the level of risk being commensurate with the member's claimed share of the farming operation.

(b) For a farming operation conducted by a joint operation in which the capital, land, or equipment is contributed by the joint operation, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1)(i) of this section, and if contributed directly by the joint operation, must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or other joint operation that has an interest in the farming operation; and

(2) To meet the requirements of paragraphs (a)(2) and (3) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations with an interest in the operation, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of §1400.201(b)(2) and (3), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will be considered to be actively engaged in farming with respect to the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The legal entity independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(2) Each partner, stockholder, or member with an ownership interest or their spouse with an ownership interest makes a contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation; that are:

(i) Performed on a regular basis;

(ii) Identifiable and documentable; and

(iii) Separate and distinct from the contributions of any other partner, stockholder or member of the farming operation;

(3) The collective contribution of the partners, stockholders and members is significant and commensurate;

(4) The legal entity has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation; and

(5) The legal entity makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation.

(b) If any partner, stockholder, or member fails to meet the requirements in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.

(c) An exception to paragraph (b) of this section will apply if:

(1) At least 50 percent of the stock is held by partners, stockholders, or members that are actively providing labor or management and

(2) The partners, stockholders, or members are collectively receiving, directly or indirectly, total payments equal to or less than one payment limitation.

(d) For a farming operation conducted by a legal entity in which the

capital, land, or equipment is contributed by the legal entity, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a)(1) of this section, must be contributed directly by the legal entity and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (a)(4) and (a)(5) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.205 Trusts.

A trust will be considered to be actively engaged in farming with respect to a farming operation if:

(a) The trust independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management, must be at least 50 percent;

(c) The trust has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(d) The trust makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation;

(e) For a farming operation conducted by a trust in which the capital, land, or equipment is contributed by the trust, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (c) and (d) of this section and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(f) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(g) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.206 Estates.

(a) For 2 program years after the program year in which a person dies, the person's estate will be considered to be actively engaged in farming if:

(1) The estate, as a legal entity, makes a significant contribution of either:

(i) Capital, equipment, or land or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management or

(ii) The combination of active personal labor and active personal management; and

(3) The estate has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(4) The estate makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation; and

(5) The representative of the estate has provided a tax identification number for the estate and a copy of a court order, will, or other legal document that identifies the heir(s) and tax identification number(s) of the heir(s).

(b) For a farming operation conducted by an estate in which the capital, land, or equipment is contributed by the estate, the capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the estate and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

(2) To meet the requirements of paragraphs (c)(3)and (a)(4) of this section, and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(c) After the period set forth in paragraph (a) of this section, the deceased person's estate will not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines, for the purpose of obtaining program payments, that the estate has not been settled.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 900, Jan. 7, 2010; 85 FR 52039, Aug. 24, 2020]

§ 1400.207 Landowners.

(a) A person or legal entity that is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, will be considered to be actively engaged in farming with respect to the owned land, if the landowner:

(1) Receives rent or income for the use of the land based on the land's production or the operation's operating results;

(2) Has a share of the profits or losses from the farming operation commensurate with the landowner's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the landowner's claimed share of the farming operation.

(b) A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to the member of the joint operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.208 Family members.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom are family members, an adult family member who makes a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management will be considered to be actively engaged in farming if the adult family member meets the provisions in paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

(1) Have a share of the profits or losses from the farming operation commensurate with the person's contributions to the operation and

(2) Make contributions to the farming operation that are at risk for a

loss, with the level of risk being commensurate with the person's claimed share of the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.209 Sharecroppers.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206 of this part, with respect to a person who is a sharecropper, the person will be considered to be actively engaged in farming if the sharecropper meets the provisions of paragraph (b) of this section.

(b) A sharecropper who elects to be considered actively engaged in farming under this section must:

(1) Make a significant contribution of active personal labor to the farming operation;

(2) Have a share of the profits or losses from the farming operation commensurate with the person's contribution to the operation; and

(3) Make a contribution to the farming operation that is at risk for a loss, with the level of risk being commensurate with the person's claimed share of the farming operation.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.210 Deceased and incapacitated persons.

If the person dies or is incapacitated before a determination is made that the person is ''actively engaged in farming,'' the representative of the deceased person's estate or the incapacitated person, or other person if necessary, must provide the determining authority information to verify that the person did make a conscious effort to and would have been determined to be actively engaged in farming if not for the person's death or incapacitation. If the person dies or is incapacitated after being determined to be ''actively engaged in farming,'' the determining authority will allow the determination to be in effect for that program year or fiscal year, as applicable. However, the following year the person or the person's estate must meet all necessary requirements in order to be determined to be ''actively engaged in farming'' for that year.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.

Any person or legal entity that does not satisfy all of the applicable provisions of §§ 1400.201 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity will not be considered to be actively engaged in farming with respect to the farming operation.

§ 1400.212 Growers of hybrid seed.

The existence of a hybrid seed contract for a person or legal entity will not be taken into account when making an actively engaged in farming determination with respect to the person or legal entity. However, the person or legal entity must satisfy all other applicable provisions of this part.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.213 Military personnel.

If a person is called to active duty in the military before a determination is made that the person is actively engaged in farming, the person may be considered to be actively engaged in farming if the determining authority determines that the person did make a conscious effort to, and would have been determined to be, actively engaged in farming if the person would not have been called to active duty. If the person is called to active duty after being determined to be actively engaged in farming, the determination will remain in effect for the program year.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52039, Aug. 24, 2020]

§ 1400.214 Cash rent tenants.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of this subpart and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any

arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to the land under a program specified in §1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to the cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Significant contributions of both active personal management and equipment.

(b) If the equipment is leased by the tenant from:

(1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area; or

(2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.

(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop year. Complete control is defined as exclusive access and use by the tenant.

(d) If the cash rent tenant is a joint operation, then each member or their spouse must make a significant contribution of active personal labor or active personal management as specified in §1400.203(a)(1)(ii) to be considered eligible for the member's share of the program payments received by the joint operation on the cash rented land.

(e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in §1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.

[85 FR 52040, Aug. 24, 2020]

Subpart D [Reserved]

Subpart E—Foreign Persons

§ 1400.401 Eligibility.

(a) Subject to the conditions set out in paragraphs (b) and (c) of this section, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101–1778) will be ineligible to receive any type of loans or payments made available under Title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714–714o), or subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836), or under any contract entered into under Title XII of that Act (16 U.S.C. 3801–3845), with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by the person, unless the person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on the farm. Likewise, and subject to the same conditions, such persons may be ineligible for payments under any other program which by its own regulations specifically provides for that ineligibility and adopts the regulations in this subpart.

(b)(1) A corporation or other legal entity will be ineligible to receive payments, loans, and benefits if more than 10 percent of the ownership of the legal entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign person who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by the legal entity. However, upon the written request of the legal entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the legal entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by the legal entity.

(2) In determining whether more than 10 percent of the ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will be the higher of the amount of the interest on:

(i) The date the applicable program contract or agreement is executed by the legal entity or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other legal entity must inform the county committee of any increase in ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in ownership after a payment, loan, or benefit has been made, the legal entity will refund the payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, a person's or legal entity's percentage share of the limited partnership, corporation, or other similar legal entity will be based upon the outstanding shares of stock or other similar unit of ownership held by the person or legal entity as compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar legal entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar legal entity owned by a person or legal entity will be determined by the Deputy Administrator on the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, the percentage share will be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of the stock or other unit of ownership, including the various rights and privileges that are attributed to each the class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by a person or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

[73 FR 79273, Dec. 29, 2008, as amended at 75 FR 19189, Apr. 14, 2010]; 85 FR 52040, Aug. 24, 2020]

§ 1400.402 Notification.

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the legal entity conducts its farming operation if:

(1) Any person, group of persons, legal entity, or group of legal entities holds more than a 10 percent interest in the legal entity; and

(2) The person, group of persons, legal entity, or group of legal entities, in accordance with §1400.401, are ineligible to receive a payment, loan, or benefit.

(b) Written notification must include the name and social security number or taxpayer identification number of the a person or legal entity, if known, and of all persons and legal entities that hold an interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52040, Aug. 24, 2020]

Subpart F—Average Adjusted Gross Income Limitation

§ 1400.500 Applicability.

(a) A person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in §1400.1 if the average adjusted gross income of the person or legal entity exceeds $900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) Determinations made under this subpart for conservation programs are:

(1) Applicable starting with the 2015 fiscal year, except for AMA which is applicable with the 2014 fiscal year;

(2) Based on the year for which the conservation program contract or agreement is approved; and

(3) Applicable for the entire term of the subject agreement or contract.

(c) Vendors that receive payment for technical services provided in conjunction with programs made subject to this subpart by regulation or statute, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with the programs.

(d) Payments to an escrow agent, or other legal entity of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant, are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(e) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes as defined in §1400.3 are not subject to this subpart.

(f) The Administrator or NRCS Chief may waive the limitation under this section on a case-by-case basis for the protection of environmentally sensitive land of special significance. A waiver request must be in writing and:

(1) Show that use of conservation program funding on or adjacent to environmentally sensitive land of special significance is critical to the success of a project that provides conservation benefits to multiple producers or landowners in a community, watershed, or other geographic area;

(2) Demonstrate that the proposed action achieves enduring protection of environmentally sensitive land of special significance through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land; or

(3) Present evidence that otherwise demonstrates, as determined by the Administrator or the NRCS Chief, that the waiver is necessary to address the critical natural resources referenced in the definition of environmentally sensitive land of special significance.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 52040, Aug. 24, 2020]

§1400.501 Determination of average adjusted gross income.

(a) Except as otherwise provided in this subpart, average adjusted gross income means:

(1) For a person filing a separate tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the person for the applicable tax year;

(2) For a person filing a joint tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which the income would have been declared and reported if the persons had filed two separate returns and that this calculation is consistent with the information supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported ''taxable income'' as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt legal entity, the ''unrelated business taxable income'' of the legal entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership, or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(b) For purposes of applying this subpart and calculating the 3-year average referenced in §1400.500, that average will be for the adjusted gross income

for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For a legal entity that is not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered ''new'' to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the ''old'' legal entity. When there is this commonality, income of the ''old'' legal entity will be averaged with that of the ''new'' legal entity for the base period.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014; 85 FR 50240, Aug. 24, 2020]

§ 1400.502 Compliance and enforcement.

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation;

(2) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(3) The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the person's or legal entity's income;

(4) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.

(b)(1) All persons and legal entities are subject to an audit by FSA of any information submitted in accordance with this subpart. As a part of this audit, income tax returns may be requested, and if requested, must be supplied by all related persons and legal entities.

(2) In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested.

(c) Failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

[73 FR 79273, Dec. 29, 2008, as amended at 79 FR 21097, Apr. 14, 2014]

§ 1400.503 Commensurate reduction.

(a) Any program payment or benefit subject to this subpart provided to a legal entity, general partnership, or joint venture will be reduced by an amount commensurate with the direct and indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity determined to have an average adjusted gross income in excess of the applicable limitation under the standards provided elsewhere in this subpart for the direct recipient of the payments.

(b) Ownership interest in a legal entity will be reviewed to the fourth level of ownership, as specified in §1400.105, to determine whether a commensurate reduction is applicable and the extent of the reduction. If an ownership interest is not held by a person in the fourth level of ownership in a legal entity, no

payment or benefit will be made with respect to the interest.

[73 FR 79273, Dec. 29, 2008, as amended at 85 FR 52040, Aug. 24, 2020]

Subpart G—Additional Payment Eligibility Provisions for Joint Operations and Legal Entities Comprised of Non-Family Members or Partners, Stockholders, or Persons With an Ownership Interest in the Farming Operation

SOURCE: 80 FR 78128, Dec. 16, 2015, unless otherwise noted.

§ 1400.600 Applicability.

(a) This subpart is applicable to all of the programs as specified in §1400.1 and any other programs as specified in individual program regulations.

(b) The requirements of this subpart will apply to farming operations for FSA program payment eligibility and limitation purposes as specified in subparts B and C of this part.

(c) The requirements of this subpart do not apply to farming operations specified in paragraph (b) of this section if either:

(1) All persons who are partners, stockholders, or persons with an ownership interest in the farming operation or of any entity that is a member of the farming operation are family members as defined in §1400.3; or

(2) The farming operation is seeking to qualify only one person as making a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, for the purposes of qualifying only one person or entity as actively engaged in farming.

§ 1400.601 Definitions.

(a) The terms defined in §1400.3 are applicable to this subpart and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this subpart:

Active personal management means personally providing and participating in management activities considered critical to the profitability of the farming operation and performed under one or more of the following categories:

(i) Capital, which includes:

(A) Arranging financing and managing capital;

(B) Acquiring equipment;

(C) Acquiring land and negotiating leases;

(D) Managing insurance; and

(E) Managing participation in USDA programs;

(ii) Labor, which includes hiring and managing of hired labor; and

(iii) Agronomics and marketing, which includes:

(A) Selecting crops and making planting decisions;

(B) Acquiring and purchasing crop inputs;

(C) Managing crops (that is, whatever managerial decisions are needed with respect to keeping the growing crops living and healthy—soil fertility and fertilization, weed control, insect control, irrigation if applicable) and making harvest decisions; and

(D) Pricing and marketing of crop production.

Significant contribution of active personal management means active personal management activities performed by a person, with a direct or indirect ownership interest in the farming operation, on a regular, continuous, and substantial basis to the farming operation, and meets at least one of the following to be considered significant:

(i) Performs at least 25 percent of the total management hours required for the farming operation on an annual basis; or

(ii) Performs at least 500 hours of management annually for the farming operation.

Significant contribution of the combination of active personal labor and active personal management means a contribution of a combination of active personal labor and active personal management that:

(i) Is critical to the profitability of the farming operation;

(ii) Is performed on a regular, continuous, and substantial basis; and

(iii) Meets the following required number of hours:

TABLE 1 TO PARAGRAPH (iii) OF THE DEFINITION OF SIGNIFICANT CONTRIBUTION OF THE COMBINATION OF ACTIVE PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT

Combination of active personal labor and active personal management minimum requirement for a significant contribution		
Management contribution in hours	Labor contribution in hours	Meets the minimum threshold for significant contribution, in hours
475	75	550
450	100	550
425	225	650
400	250	650
375	375	750
350	400	750
325	425	750
300	550	850
275	575	850
250	600	850
225	625	850
200	650	850
175	675	850
150	800	950
125	825	950
100	850	950
75	875	950
50	900	950
25	925	950

[85 FR 73602, Nov. 19, 2020]

§ 1400.602 Restrictions on active personal management contributions.

(a) If a farming operation includes any nonfamily members as specified under the provisions of §1400.201(b)(2) and (3) and the farming operation is seeking to qualify more than one person as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, then:

(1) Each person must maintain contemporaneous records or logs as specified in §1400.603; and

(2) Subject to paragraph (b) of this section, if the farming operation seeks not more than one additional person to qualify as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, because the operation is large, then the operation may qualify for one additional person if the farming operation:

(i) Produces and markets crops on 2,500 acres or more of cropland;

(ii) Produces honey with more than 10,000 hives; or

(iii) Produces wool with more than 3,500 ewes; and

(3) If the farming operation seeks not more than one additional person to qualify as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, because the operation is complex, then the operation may qualify for one additional person if the farming operation is determined by the FSA state committee as complex after considering the factors described in paragraphs (a)(3)(i) and (ii) of this section. Any determination that a farming operation is complex by an FSA state committee must be reviewed and DAFP must concur with that determination for it to be implemented. To demonstrate complexity, the farming operation will be required to provide information to the FSA state committee on the following:

(i) Number and type of livestock, crops, or other agricultural products produced and marketing channels used; and

(ii) Geographical area covered.

(b) FSA state committees may adjust the limitations described in paragraph (a)(2) of this section up or down by not more than 15 percent if the FSA state committee determines that the relative size of farming operations in the state justify making a modification of either or both of these limitations. If the FSA state committee seeks to make a larger adjustment, then DAFP will review and may approve the request.

(c) If a farming operation seeks to qualify a total of three persons as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, then the farming operation must demonstrate both size and complexity as specified in paragraph (a) of this section.

(d) In no case may more than three persons in the same farming operation qualify as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, as defined by this subpart.

(e) A person's contribution of active personal management, or the contribution of the combination of active personal labor and active personal management, to a farming operation specified in §1400.601(b) will only qualify one member of that farming operation as actively engaged in farming as defined in this part. Other individual persons in the same farming operation are not precluded from making management contributions, except that the contributions will not be recognized as meeting the requirements of being a significant contribution of active personal management.

[80 FR 78128, Dec. 16, 2015, as amended at 85 FR 52040, Aug. 24, 2020]

§1400.603 Recordkeeping requirements.

(a) Any farming operation requesting that more than one person qualify as making a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, must maintain contemporaneous records or activity logs for all persons that make any contribution of any management to a farming operation under this subpart that must include, but are not limited to, the following:

(1) Location where the management activity was performed; and

(2) Time expended and duration of the management activity performed.

(b) To qualify as providing a significant contribution of active personal management each person covered by this subpart must:

(1) Maintain these records and supporting business documentation; and

(2) If requested, timely make these records available for review by the appropriate FSA reviewing authority.

(c) If a person fails to meet the requirement of paragraphs (a) and (b) of this section, then both of the following will apply:

(1) The person's contribution of active personal management as represented to the farming operation for payment eligibility purposes will be disregarded; and

(2) The person's payment eligibility will be re-determined for the applicable program year.

PART 1401—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.

1401.1 Applicability.
1401.2 Payments in lieu of cash payments.
1401.3 Payments to persons with outstanding CCC loans.
1401.4 Commodity certificates.
1401.5 In kind payments.
1401.6 Assignments.
1401.7 Miscellaneous provisions.
1401.8 Subsequent holders.

AUTHORITY: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445d.

SOURCE: 51 FR 36921, Oct. 16, 1986, unless otherwise noted. Redesignated at 53 FR 20290, June 3, 1988, and further redesignated at 61 FR 37575, July 18, 1996.

§1401.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Farm Service Agency (FSA) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR part 713 set forth at §713.3 also shall be applicable to this part, except that the term ''commodity'' shall mean any agricultural commodity.

§1401.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or FSA, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 1401.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 1470.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 1401.4 Commodity certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made): or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of

the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to ''bearer'' or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, FSA-USDA, Kansas City, MO 64141–0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, discount or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity

of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county FSA office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities.* No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Cash redemption start date.* (1) The person to whom a generic certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, at the issuing county FSA office for payment by check in the amount of the certificate on or after the date entered in block D through the expiration date of the certificate. Such person may not exchange the certificate for commodities owned by CCC, except as otherwise agreed upon between such person and CCC.

(2) The person to whom a generic certificate is issued which has an entry of ''S/H'' in block D may exchange such certificate for commodities owned by CCC.

(3) The person to whom a commodity specific certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, to the Kansas City Commodity Office for the specific commodity entered in block C beginning on the date entered in block D through the expiration date of the certificate. Such certificate may not be exchanged for cash, except as otherwise agreed on by CCC.

(4) All other certificates may be transferred and exchanged as determined and announced by CCC.

(g) *''Generic'' and commodity-specific commodity certificates*—(1) *General.* If a commodity certificate indicates that it is a ''generic'' certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a ''generic certificate'', such certificate may be exchanged for the commodity specified on the certificate, except as may be determined and announced by CCC.

(2) *Cotton program payments.* Certificates issued as payments under the 1991 through 1995 upland cotton program, including payments issued in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, may be exchanged for CCC-owned upland cotton only during such times as determined and announced by CCC.

(3) *Commodities not available in CCC inventory.* Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

(i) *Interest.* With respect to producers who receive commodity certificates in accordance with the wheat, feed grains, upland cotton and rice price support and production adjustment programs authorized by parts 1413 and 1421 of this title, a producer to whom the certificate is issued who exchanges such a

certificate with CCC for cash in accordance with subsection (f) of this section shall receive interest with respect to such certificate for a 150 day period. Such interest shall be the rate of interest determined in accordance with part 1405 of this Title which is in effect on the date the certificate is issued.

[51 FR 36921, Oct. 16, 1986, as amended at 51 FR 43580, Dec. 3, 1986; 52 FR 45607, Dec. 1, 1987; 56 FR 361, Jan. 4, 1991]

§ 1401.5 In kind payments.

(a) Subject to the provisions of §§ 1470.2 and 1470.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 1401.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 1401.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

§ 1401.8 Subsequent holders.

(a) *General.* A person who acquires a commodity certificate from another person shall be considered to be a ''subsequent holder'' of the certificate. Subsequent holders of certificates who purchased a commodity certificate on or before January 1, 1990 may, after the expiration date specified on the certificate, submit the certificate to CCC for a payment from CCC determined in accordance with paragraph (b) of this section. All certificates must be submitted after January 2, 1991 and on or before May 28, 1991. Certificates submitted after May 28, 1991 shall not be accepted for payment. Certificates shall be considered to be submitted as of the date of the postmark on the envelope containing the certificate. All certificates submitted for payment must be submitted with, and in accordance with, Form CCC–8. All certificates submitted to CCC for payment shall be retained by CCC.

(b) *Payment rates.* (1) Certificates with an expiration date of April 30, 1989 or earlier shall not, in any instance, be eligible for payment by CCC. Certificates which are submitted 18 months after the expiration date specified on the certificate shall not be accepted for payment by CCC.

(2) Persons who submit to CCC, in accordance with this section, certificates with an expiration date of May 31, 1989 or later shall receive a payment equal to 50 percent of the certificate's face value if such certificate is submitted within the period which:

(i) Begins 6 months and one day after the expiration date specified on the certificate and

(ii) Ends 18 months after such expiration date.

(3) Persons who submit to CCC in accordance with this section certificates with an expiration date of May 31, 1989 or later shall receive a payment equal to 85 percent of the certificate's face value if such certificate is submitted within the period which:

(i) Begins the day after the expiration date specified on the certificate and

(ii) Ends 6 months after such expiration date.

(c) *Transitional rules.* In order to provide full benefits under this section to parties whose certificates may decline in value from the date of enactment of section 1122 of the Food, Agriculture, Conservation, and Trade Act of 1990 (November 28, 1990) until the implementation of the provisions of such section, persons who, by January 31, 1991, submit to CCC in accordance with this section certificates with expiration dates of May 31, 1989, June 30, 1989, May 31, 1990, and June 30, 1990, shall receive payments for such certificates as if they had been submitted on November 30, 1990.

(d) *Payment limit.* (1) No person, as defined in §719.2(r) of this title, shall receive a payment in excess of $1,000, except that any wholly-owned or wholly controlled entity, such as a corporation, shall be considered to be the same person as the person which owns or controls such entity. Any person who adopts or participates in adopting a scheme or device which is designed to evade this limitation or which has the effect of evading this limitation shall be ineligible to receive a payment under this section. Such acts include, but are not limited to:

(i) Concealing information which affects the application of this section;

(ii) Submitting false or erroneous information;

(iii) Creating fictitious entities for the purpose of evading the application of this section.

(2) No payment shall be paid to a person which is in excess of the amount which the person paid for the certificate.

(e) *Application.* In order to receive a payment under this section, a person must:

(1) Submit certificates with an expiration date of May 31, 1989, or later with a completed Form CCC–8 to CCC postmarked by May 28, 1991;

(2) Submit no earlier than January 2, 1991 all certificates and Forms CCC–8 to CCC by mail at the following address: CCC Expired Certificate Exchange, Attn: Claims and Collections Division, P.O. Box 419205, Kansas City, Missouri, 64141–6205;

(3) Submit evidence to CCC which establishes to the satisfaction of CCC:

(i) The date the subsequent holder purchased the certificates;

(ii) The price paid by the subsequent holder for the certificates; and

(iii) If requested by CCC, the name and address of the person from whom the subsequent holder purchased the certificates.

[56 FR 362, Jan. 4, 1991]

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

Sec.

1402.1 General.
1402.2 Sales of inventory.
1402.3 Submission of offers, terms, and conditions.
1402.4 Information availability.
1402.5 Late payments.

AUTHORITY: 7 U.S.C. 7285, 15 U.S.C. 714b and 714c.

SOURCE: 71 FR 40642, July 18, 2006, unless otherwise noted.

§1402.1 General.

To facilitate trade through usual and customary channels, facilities, and arrangements of trade and commerce, the Commodity Credit Corporation (CCC) will disseminate general sales offering information on the Farm Service Agency's (FSA) Commodity Operations Web site located on the Worldwide Web at *http://www.fsa.usda.gov/daco/default.htm.* The Web site will be reviewed and amended as necessary to reflect current general sales offering information. CCC will make regular amendments as necessary deleting or adding to the sales provisions or changing prices or methods of sales. The information

posted at this Web site is for the purpose of public information and does not constitute an offer to sell by CCC or an invitation for offers to purchase from CCC. CCC may make its commodities available for sale without prior notification to storing warehouse operators. Information pertaining to opportunities to purchase commodities from CCC will be published on the FSA Commodity Operations Web site when such opportunities are available.

§ 1402.2 Sales of inventory.

CCC will entertain offers from prospective buyers for the purchase of any commodities owned by CCC, including those commodities that are marketed through commercial, Internet-based marketing services. Various commodities owned by CCC may be offered for sale through commercial, Internet-based marketing services. Interested parties may submit requests for information related to Internet-based commodity sales to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.3 Submission of offers, terms, and conditions.

Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among other things, payment by wire transfer of funds, certified check or cashiers check before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and in sales that require a commodity to be used for only a specific purpose, documentation that use of the commodity was for only that purpose.

§ 1402.4 Information availability.

The terms and conditions of sale with respect to commodities that are not sold through Internet-based marketing service are available online. Requests for terms and conditions may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.5 Late payments.

If payment is not received by CCC within the period specified in the sales contract, interest will be assessed by CCC. If a buyer fails to make arrangements for payment according to the provisions of the contract, CCC retains the right to terminate the sales contract. If CCC terminates the sales contract for default in whole or in part, CCC may offer the commodity for sale and the original party will be liable to CCC for any losses incurred and damages sustained as a result of the party's failure to timely remit payment for the commodity.

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.

1404.1 General statement.
1404.2 Definitions.
1404.3 Payments which may be assigned.
1404.4 Execution of assignment form.
1404.5 [Reserved]
1404.6 Payment to the assignee.
1404.7 Misrepresentations.
1404.8 Liability of the Secretary or disbursing agents.
1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

SOURCE: 54 FR 52883, Dec. 22, 1989, unless otherwise noted.

§ 1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Farm Service Agency (FSA) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *Assignee* means any person, including any agency of the Federal Government, to whom an assignment of an FSA or CCC payment is made in accordance with this part.

(2) *Assignor* means any person who is the recipient of a payment from FSA or CCC who assigns the payment to another person in accordance with this part.

(3) *Payment* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(i) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by FSA or CCC, any payment due a person from FSA or CCC may be assigned.

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any FSA or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or FSA programs and contracts.

(2)(i) To be recognized by FSA or CCC, Form CCC–36 must be filed in the county FSA office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by FSA or CCC, Forms CCC–251 and 252 must be filed with the FSA or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee.

(3) The assignor and the assignee shall promptly notify the appropriate FSA or CCC office of any change affecting the assignment.

(b) [Reserved]

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]

§ 1404.5 [Reserved]

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, FSA, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA without regard to the date of filing of a Form CCC–36 with the applicable FSA or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA if such indebtedness was entered on the debt record of the applicable FSA or CCC office prior to the date of the filing of Forms CCC–251 and 252 with the applicable FSA or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or FSA which was entered on the debt record of the applicable FSA or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and FSA or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC–36 or Forms CCC–251 and 252 with the appropriate FSA or CCC office.

§ 1404.7 Misrepresentations.

If FSA or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, FSA or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, FSA or CCC finds that any material misrepresentation

was in fact made, FSA or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns FSA, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

Sec.

1405.1 Interest.
1405.2 Basic rule of fractions.
1405.3 Effect of changes in regulations.
1405.4 Delegations of authority.
1405.5 Notice and comment.
1405.6 Crop insurance requirement.
1405.7 Uruguay Round Agreements Act.
1405.8 Disqualification due to crop insurance violation.
1405.9 Commodity assessments.

AUTHORITY: 7 U.S.C. 1515; 7 U.S.C. 7416a; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

SOURCE: 61 FR 37575, July 18, 1996, unless otherwise noted.

§ 1405.1 Interest.

(a) Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC the rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC, plus 1 percent. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(b) The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date, plus 1 percent. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR part 718.

§ 1405.3 Effect of changes in regulations.

Unless otherwise indicated, the regulations in effect in this chapter as of April 4, 1996, shall continue to apply to the 1991 through 1995 crops of agricultural commodities, to milk produced on or before May 1, 1996, and to contracts entered into prior to any amendments to this chapter after that date.

§ 1405.4 Delegations of authority.

The delegations of authority relating to the CCC programs and activities are set forth in the by-laws of CCC and in dockets approved by the CCC Board of Directors. Copies of the By-laws and the dockets may be obtained from the Secretary of CCC.

§ 1405.5 Notice and comment.

The level of loans, purchases and payments made in accordance with the programs set forth in this chapter shall be determined without regard to the notice and comment provisions of 5 U.S.C. 553.

§ 1405.6 Crop insurance requirement.

(a) To be eligible for any benefits or payments under 7 CFR part 1410 the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which

the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. In meeting this requirement, the producer may:

(1) Obtain at least the catastrophic level of crop insurance in all counties for each crop of economic significance in which the producer has an interest;

(2) Obtain at least the catastrophic level of crop insurance for some, but not all, crops of economic significance for which the producer has an interest, and sign a waiver; or

(3) Sign a waiver that waives any eligibility for crop loss assistance in connection with the producer's crop.

(b) *Crop of economic significance.* The term ''crop of economic significance'' means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

[61 FR 37575, July 18, 1996, as amended at 68 FR 32337, May 30, 2003]

§ 1405.7 Uruguay Round Agreements Act.

In the event the outlays by the United States for domestic support measures will exceed, in any required reporting period, the allowable levels under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act), CCC will, as determined by the Secretary of Agriculture, reduce the amount of payments and benefits to be made in any such reporting period, and/or collect a refund of payments or benefits previously made with respect to such reporting period, under parts 1412, 1413, 1421, 1427, 1430, 1434 and 1435 of this chapter in order to ensure that the level of domestic support provided by the United States complies with the commitments of the United States in the Uruguay Round Agreements.

[67 FR 64751, Oct. 21, 2002]

§ 1405.8 Disqualification due to crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) The FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(8) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to CCC that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person shall be considered ineligible for payments under the programs specified in paragraph (a) of this section that are funded by CCC for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance

benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

[68 FR 39448, July 2, 2003, as amended at 72 FR 63361, Nov. 8, 2007]

§ 1405.9 Commodity assessments.

(a) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise required to be remitted to a State agency under a State statute by the producer of the commodity pledged as collateral for such loan or by the first purchaser of such commodity subject to the requirements of paragraph (b) of this section.

(1) The assessment will be collected in one of the following ways, as requested by the State, but not both:

(i) When the proceeds of the loan are disbursed; or

(ii) When the commodity pledged as collateral for the loan is forfeited to CCC, in which case CCC will collect from the producer the amount of the assessment submitted by CCC to the State.

(2) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise authorized to be remitted to a federally authorized entity under a Federal statute by the producer of the commodity pledged as collateral for such loan or the first purchaser of such commodity in the manner agreed to by CCC and the entity to whom the Secretary of Agriculture has authorized to collect such assessments.

(b) CCC will collect commodity assessments authorized under a State statute when:

(1) The State entity has:

(i) Requested that the assessment be collected;

(ii) Identified whether the assessment is to be collected at the time the loan proceeds are disbursed or at the time the commodity is forfeited to CCC;

(iii) Identified the person who may enter into an agreement with CCC that sets forth the obligations of the State and CCC with respect to the collection of the assessment; and

(iv) Provided an opinion from the Office of the Attorney General to CCC that concludes the person signing the agreement may obligate the State to comply with the agreement and the provisions of Public Law 108–470 have been met.

(2) The agreement described in paragraph (c) of this section has been executed by the appropriate State official and CCC.

(c) CCC will enter into an agreement with an authorized State official to collect commodity assessments when the actions set forth in paragraphs (b)(1) and (2) of this section have been completed. Such agreement will contain the obligations and responsibilities of the State and CCC. All such agreements will include provisions that provide:

(1) The State will indemnify CCC for any costs incurred in the collection of the assessment including costs incurred with respect to resolution of disputes arising from the requested collection of the assessment but not for administrative costs incurred by CCC in the collection of the assessment;

(2) The State, in cases where an assessment has been collected two or more times with respect to the same quantity of the commodity subject to the assessment, will refund the amount of the excess collection to the producer.

(3) The agreement may be terminated by either party upon 30 days notice.

(4) The State, in cases where the marketing assistance loan is made by a cooperative marketing association or a designated marketing association approved by CCC, or any other similar entity that is approved by CCC, to obtain such a loan on behalf of its members may enter into individual arrangements with such entity to facilitate the collection of the assessment with the approval of CCC.

[70 FR 52285, Sept. 2, 2005, as amended at 75 FR 70812, Nov. 19, 2010]

PART 1407—DEBARMENT AND SUSPENSION

Sec.

1407.1 Purpose.
1407.2 Nonprocurement debarment and suspension.

1407.3 Procurement debarment and suspension.

AUTHORITY: 15 U.S.C. 714b.

SOURCE: 64 FR 67471, Dec. 2, 1999, unless otherwise noted.

§ 1407.1 Purpose.

This part specifies the policies that CCC will follow in taking action to debar or suspend individuals or firms from participation in Federal nonprocurement and procurement activities.

§ 1407.2 Nonprocurement debarment and suspension.

(a) CCC will proceed under 2 CFR parts 180 and 417 when taking action to debar or suspend participants or potential participants in CCC's nonprocurement activities.

(b) The debarring and suspending official for nonprocurement actions taken by CCC shall be as follows: For actions initiated on behalf of CCC by the Foreign Agricultural Service (FAS), the Food and Nutrition Service (FNS), or the Agricultural Marketing Service (AMS), the debarring and suspending official will be the Vice President, CCC, who is the Administrator FAS, FNS, or AMS, respectively. For actions initiated on behalf of CCC by the Natural Resources Conservation Service (NRCS), the official will be the Vice President, CCC, who is the Chief, NRCS.

[64 FR 67471, Dec. 2, 1999, as amended at 79 FR 75997, Dec. 19, 2014]

§ 1407.3 Procurement debarment and suspension.

CCC will proceed under this part when taking action to debar or suspend contractors with CCC or participants or potential participants in CCC's procurement activities. CCC will apply the provisions of 48 CFR part 409, subpart 409.4, in such actions, with the exception that the debarring and suspending official will be the Executive Vice President, CCC, or a designee.

PART 1409—TRADE MITIGATION PROGRAM

Subpart A—2018 Market Facilitation Program (MFP)

Sec.
1409.1 Applicability.
1409.2 Definitions.
1409.3 Producer eligibility requirements.
1409.4 Time and method of application.
1409.5 Calculation of payments.
1409.6 Eligibility subject to verification.
1409.7 Miscellaneous provisions.

Subpart B—2019 Market Facilitation Program (MFP)

1409.101 Applicability.
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1409.103 Producer eligibility requirements.
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Subpart C—Expanded Domestic Commodity Donation Program (EDCDP)

1409.201 Applicability.
1409.202 Definitions.
1409.203 Application process.
1409.204 Award process.
1409.205 Execution of agreement.
1409.206 Eligibility subject to verification.
1409.207 Miscellaneous provisions.

AUTHORITY: 15 U.S.C. 714b and 714c.

SOURCE: 83 FR 44176, Aug. 30, 2018, unless otherwise noted.

Subpart A—2018 Market Facilitation Program (MFP)

SOURCE: Redesignated at 84 FR 36461, July 29, 2019, unless otherwise noted.

§ 1409.1 Applicability.

This subpart specifies the eligibility requirements and payment calculations for the Market Facilitation Program (MFP) for 2018 crops. MFP will provide payments with respect to commodities which have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The determination of eligible commodities and any specific program requirements for a commodity will be specified in a notice of funding

availability published by CCC in the FEDERAL REGISTER.

[83 FR 44176, Aug. 30, 2018, as amended at 84 FR 36461, July 29, 2019]

§ 1409.2 Definitions.

The following definitions apply to MFP. The definitions in part 718 of this title and parts 1400, and 1421 of this section apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial production that has been designated as eligible for payments under MFP.

Crop means the harvested production of a commodity.

Crop year means:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

NOFA means a notice of funds availability published by CCC in the FEDERAL REGISTER that specifies terms and conditions of MFP that are applicable to a specific commodity.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in § 718.2 of this title.

§ 1409.3 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must:

(1) Meet all of the requirements in this part and the NOFA that is applicable to the commodity;

(2) Be a:

(i) Citizen of the United States;

(ii) Resident alien, which for purposes of this part means ''lawful alien'' as defined in part 1400 of this chapter;

(iii) Partnership of citizens of the United States; or

(iv) Corporation, limited liability corporation, or other organizational structure organized under State law;

(3) Have an ownership interest in the commodity.

(b) For eligible crops, a producer's share in the crop must be reported for the applicable crop year on form FSA–578, Report of Acreage, on file in the FSA county office as of the acreage reporting deadline, or no later than the date specified in the relevant NOFA. For crops that are covered commodities under § 1412.3 of this chapter, each applicant must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter, in the crop year for which the crop is included in MFP.

(c) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.4 Method of application.

(a) To apply for an MFP payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for an MFP payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the applicable crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title;

(4) For crops, an acreage report for the applicable crop year as provided in part 718 of this title; and

(5) Verifiable records that substantiate the amount of production as specified in the relevant NOFA.

§ 1409.5 Calculation of payments.

The payment under this rule will be calculated by multiplying fifty percent of the total production of the commodity times the MFP payment rate for that commodity that is in effect when the payment is made times the producer's eligible share of the commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity.

§ 1409.6 Eligibility subject to verification.

(a) Producers who are approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.7 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The $900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2018 crop year or marketing year for livestock and dairy the tax years are 2014, 2015, and 2016).

(f) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than $125,000 in payments as specified in the relevant NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or subentity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under MFP but only as to beneficiaries who, as a condition of such waiver, agree to

apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of §718.304 of this title, ''Failure to Fully Comply,'' do not apply to this part.

Subpart B—2019 Market Facilitation Program (MFP)

SOURCE: 84 FR 36461, July 29, 2019, unless otherwise noted.

§ 1409.101 Applicability.

This subpart specifies the eligibility requirements and payment calculations for the MFP for 2019 agricultural commodities. MFP will provide payments with respect to agricultural commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports. Any specific program requirements for a commodity will be specified in a notice of funding availability published by the Commodity Credit Corporation (CCC) in the FEDERAL REGISTER.

§ 1409.102 Definitions.

The following definitions apply to MFP. The definitions in 7 CFR part 718 and parts 1400 and 1421 of this chapter apply, except where they conflict with the definitions in this section.

Application means the MFP application form.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes that has been designated as eligible for payments under MFP.

County payment rate means the per acre value determined by: Historical acres and yields of non-specialty crops planted in that county and the amount of damage calculated due to trade actions of foreign governments resulting in the loss of exports represented as a per unit (for example, bushel or pound).

Crop means the non-specialty crops and specialty crops.

Crop year means:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP covered crops, the crop year as provided in part 1437 of this chapter.

MFP means the Market Facilitation Program funded by CCC and administered by the Farm Service Agency (FSA).

NOFA means a notice of funds availability published by CCC in the FEDERAL REGISTER that specifies terms and conditions of MFP that are applicable to a specific commodity.

Non-specialty crop means any of the following crops: Alfalfa hay, barley, canola, corn, crambe, dried beans, dry peas, extra long staple cotton, flaxseed, lentils, long grain and medium grain rice, millet, mustard seed, oats, peanuts, rapeseed, rye, safflower, sesame seed, small and large chickpeas, sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat. If warranted, additional non-specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the FEDERAL REGISTER.

Producer means a livestock producer, dairy producer, or a producer of a crop as defined in 7 CFR 718.2.

Specialty crops means any of the following crops: Almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts. If warranted, additional specialty crops may be included in MFP in which case the availability of assistance will be specified in a NOFA published in the FEDERAL REGISTER.

§ 1409.103 Producer eligibility requirements.

(a) To be eligible for an MFP payment, a producer must meet all of the requirements in this part and the NOFA that is applicable to the commodity.

(b) A producer's share in the crop must be reported for the 2019 crop year on form FSA–578, Report of Acreage, submitted to FSA, and must be on file in the FSA county office by the applicable reporting dates, or no later than the date specified in the applicable NOFA.

(c) For non-specialty crops, except as determined by CCC, each applicant must be a person or legal entity who was actively engaged in farming, as provided in part 1400 of this chapter.

(d) For livestock and dairy, a producer must have had an ownership interest in livestock or dairy production during the applicable time period established by CCC in the applicable NOFA.

§ 1409.104 Method of application.

(a) To apply for a payment, the producer must submit an MFP application on the form designated by CCC to an FSA county office.

(b) In the event that the producer does not submit documentation in response to any request of CCC to support the producer's application or documentation furnished does not show the producer had ownership in the commodity as claimed, the application for that commodity will be disapproved.

(c) A request for a payment will not be approved by CCC until all the applicable eligibility provisions have been met and the producer has submitted all required forms and supporting documentation. In addition to the completed application form, if the following forms and documentation are not on file in the FSA county office or are not current for the 2019 crop year of the crop or applicable year for the commodity for which MFP has been announced as available, the producer must also submit:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this chapter;

(2) An average adjusted gross income statement for the applicable year entity as provided in part 1400 of this chapter;

(3) A highly erodible land conservation and wetland conservation certification as provided in part 12 of this title;

(4) For non-specialty and specialty crops, an acreage report for the applicable crop year as provided in 7 CFR part 718; and

(5) For dairy and livestock, verifiable records that substantiate the amount of production as specified in the applicable NOFA.

§ 1409.105 Calculation of payments.

(a) For non-specialty crops, the payment under this subpart will be calculated by multiplying the county payment rate by the 2019 reported planted acreage for a farm not to exceed the sum of planted and prevented planted acres of non-specialty crops on the farm in 2018, and available acreage from 2018 expired Conservation Reserve Program contracts. Producers' payments may be adjusted as determined by CCC and as detailed in the applicable NOFA.

(b) For non-specialty prevented planted crops followed by a CCC approved cover crop, the payment rate will be $15 per acre.

(c) For dairy and livestock, the payment under this subpart will be calculated by multiplying the total production of the commodity times the producer's eligible share of the commodity times the payment rate for that commodity, as provided for in a subsequent NOFA.

(d) For specialty crops, the payment under this subpart will be calculated by multiplying 2019 bearing acres of the specialty crop by the payment rate for the relevant specialty crop.

(e) For MFP payments:

(1) The first payment will be up to 50 percent of the total calculated payment.

(2) CCC will determine if any further payments are warranted. If CCC determines that a second payment is warranted, it will be up to 75 percent of the total calculated payment less the amount received in the first payment and the second payment period will begin in November 2019.

(3) If CCC determines that a final payment is warranted, it will be for up to the remaining amount of the total calculated payment, unless otherwise adjusted by CCC, and the last payment period will begin in January 2020.

§ 1409.106 Eligibility subject to verification.

(a) Producers approved for participation in MFP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Producers must submit documentation to CCC as requested to substantiate an application.

(c) Producers receiving payments or any other person who furnishes such information to CCC must permit authorized representatives of USDA or

the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 1409.107 Miscellaneous provisions.

(a) If an MFP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment to CCC with interest calculated from the date of the disbursement of the payment.

(b) The refund of any payment to CCC is in addition to liability under any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(c) The regulations in 7 CFR parts 11 and 780 part 1400 of this chapter apply to determinations under this subpart.

(d) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity.

(e) The $900,000 average AGI limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for MFP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching or forestry related activities. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities, the person or legal entity, other than a joint venture or general partnership, is eligible to receive 2019 MFP payments up to the $250,000 payment limitation specified in the applicable NOFA. The average AGI will be calculated for a person or legal entity based on the 3 complete tax years that precede the year for which the payment is made (for the 2019 crop year or marketing year for livestock and dairy the tax years are 2015, 2016, and 2017).

(f) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than $250,000 in payments as specified in the applicable NOFA.

(g) The direct attribution provisions in part 1400 of this chapter apply to MFP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. If anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive an MFP payment, then the MFP payment to the actual payee will be reduced commensurately with that interest.

(h) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), CCC waives the restriction on receipt of funds under MFP but only as to beneficiaries who, as a condition of such waiver, agree to apply the MFP payments to reduce the amount of the judgment lien.

(i) The provisions of 7 CFR 718.304, ''Failure to Fully Comply,'' do not apply to this part.

Subpart C—Expanded Domestic Commodity Donation Program (EDCDP)

SOURCE: 84 FR 36463, July 29, 2019, unless otherwise noted.

§ 1409.201 Applicability.

(a) This subpart specifies the process for eligible non-profit entities to receive commodities from the Commodity Credit Corporation (CCC) that CCC has acquired in response to trade actions taken by foreign governments resulting in the loss of exports. The types and quantities of commodities made available under this subpart, if any, is dependent upon the ability of CCC to use such commodities through

existing domestic feeding programs administered by the Food and Nutrition Service (FNS). In the event that these domestic feeding programs are unable to use the commodities acquired by CCC, EDCDP is intended to provide the remaining commodities to low income individuals, primarily through eligible entities not participating in existing FNS food distribution programs.

(b) CCC, as specified in the applicable Notice of Commodity Availability, will use grants and cooperative agreements to conduct the Expanded Domestic Commodity Donation Program (EDCDP).

(c) The Food and Nutrition Service and the Agricultural Marketing Service will administer the EDCDP on behalf of CCC.

§ 1409.202 Definitions.

Commodity means an agricultural commodity produced in the United States intended to be marketed for commercial purposes.

Eligible entity means an incorporated nonprofit entity that is operating for religious, charitable, or educational purposes, and does not provide net earnings to or operate in any other manner that inures to the benefit of any officer, employee, or shareholder of the entity as defined in section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791) and meets the requirements of § 1409.203.

Notice of Commodity Availability (NOCA) means the notice published by CCC specifying: The types of commodities available for use under this subpart; the terms and conditions that are in addition to the requirements of this subpart regarding approved uses of such commodities; the requirements a non-profit entity must meet to be an eligible entity; and whether funds will be made available by CCC regarding storage, handling, transportation and other administrative costs.

§ 1409.203 Application process.

(a) A non-profit entity that seeks approval for participation in EDCDP, as specified in the applicable NOCA must submit to the U.S. Department of Agriculture office identified in the NOCA:

(1) The application form;

(2) A copy of the entity's 501(c)(3) tax exempt status letter from the Internal Revenue Service (IRS);

(3) A copy of the entity's most recent IRS Form-990; and

(4) Any other supporting documents specified in the NOCA.

(b) After CCC has determined that the entity has met all eligibility requirements, the eligible entity may be considered for participation in EDCDP. After approval by CCC, the eligible entity must execute the applicable grant or cooperative agreement presented by CCC.

§ 1409.204 Award process.

(a) CCC intends to make awards to responsive applicants able to fully meet the requirements of the program subject to the priority criteria outlined below.

(b) To the extent that it is unable to make awards to all fully qualified applicants due to the limited quantity of commodities that will be available under this subpart, CCC reserves the right to both make awards on a prorated basis and to prioritize awards on the criteria listed below. CCC will consider the following factors in accepting offers for participation:

(1) The extent to which an eligible entity is already a participant in existing FNS administered programs with priority placed upon those entities that are not participating in such programs;

(2) The ability of the eligible entity to receive, store, and distribute at least 20,000 pounds of food per shipment and any other requirements as outlined in the NOCA, as determined by CCC, to successfully implement the proposed program activity;

(3) The eligible entity's operational and financial capability to receive and distribute commodities provided by CCC under this subpart;

(4) The scope of the proposed program activity in terms of its intended use of such commodities in low income areas, as determined by CCC using United States Census Bureau data and information available from federal means tested programs; and

(5) Any other criteria specified in the NOCA.

(c) An eligible entity may submit only one program proposal in response

to a NOCA for the same geographic area.

§ 1409.205 Execution of agreement.

CCC will enter into a grant or cooperative agreement with an eligible entity regarding the entity's approved program proposal. The eligible entity may not assign or delegate any required action or responsibility of the entity except as provided in the applicable grant or cooperative agreement. Any modification of the grant or cooperative agreement must be made with the written approval of CCC.

§ 1409.206 Eligibility subject to verification.

(a) Eligible entities participating in EDCDP are required to retain documentation relating to the EDCDP for 3 years after the date of approval of the grant or cooperative agreement. However, records pertaining to claims or audits that remain unresolved in this period of time must be retained until such actions have been resolved.

(b) Eligible entities participating in EDCDP must permit authorized representatives of the U.S. Department of Agriculture or the General Accounting Office during regular business hours to inspect, examine, and to allow such representatives to make copies of such books, records, or other items for the purpose of confirming the accuracy of the information provided by such entity.

§ 1409.207 Miscellaneous provisions.

(a) An eligible entity must comply with the provisions of:

(1) 2 CFR Chapters I and II (Office of Management and Budget Government-wide Guidance for Grants and Agreements);

(2) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards);

(3) 2 CFR part 415 (General Program Administrative Regulations); and

(4) 2 CFR part 418 (New Restrictions on Lobbying).

(b) An eligible entity that does not comply with the terms of the applicable grant or cooperative agreement is subject to the provisions of: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

EDITORIAL NOTE: For FEDERAL REGISTER citations to regulations affecting previous program years not included in this volume, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

SOURCE: 84 FR 66819, Dec. 6, 2019, unless otherwise noted.

§ 1410.1 Administration.

(a) The Conservation Reserve Program (CRP) is administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA; and will be carried out by the FSA State and county committees (''State committees'' and ''county committees,'' respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such county committee, including, but not limited to:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee will preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by producers will be used to determine eligibility for CRP benefits. Furnishing the data is

voluntary; however, the failure to provide data could result in CRP benefits being withheld or denied.

(f) Notwithstanding other provisions of this section, the suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives will be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by the Deputy Administrator, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case will such determination compel the Deputy Administrator to execute a CRP contract that the Deputy Administrator does not believe will serve the purposes of CRP established by this part. Any approved technical authority will use CRP guidelines established by the Deputy Administrator.

(g) The regulations in this part apply to all CRP contracts approved after December 6, 2019.

§ 1410.2 Definitions.

(a) The definitions in part 718 of this title apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions also apply to this part:

Agricultural commodity means:

(i) Any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters;

(ii) Sugarcane planted or produced in a State; or

(iii) Alfalfa and other multi-year grasses and legumes grown in a rotation practice as approved by CCC.

Agricultural Conservation Easement Program (ACEP) means the program that provides for the establishment of wetland easements on land under subtitle H of Title XII of the Food Security Act of 1985, as amended.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in CRP, including any incentive payments that are not specifically cost-share payments. For purposes of this definition, practice incentive payments, and incentive payments related to forest management are not considered part of annual rental payments.

Approved cover means permanent vegetative cover or water cover specified in an approved CRP contract.

Carrying capacity has the same meaning as ''normal carrying capacity'' defined in part 1416 of this chapter.

Commercial pond-raised aquaculture facility means any earthen facility from which $1,000 or more of freshwater food fish were sold or normally would have been sold during a calendar year.

Common grazing practices means grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

Conservation district means a political subdivision of a State, Indian Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means an area designated with adverse water quality, wildlife habitat, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs.

Conserving use means a use of land that meets crop rotation requirements, as specified by CCC, for: Alfalfa, multiyear grasses, and legumes planted during 2012 through 2017; for summer fallow during 2012 through 2017; or for land on which the CRP contract expired during the period 2012 through 2017 and on which the grass cover required by the CRP contract continues to be maintained as though still enrolled. Land that meets this definition of ''conserving use'' will be considered to have been planted to an agricultural commodity for the purposes of eligibility specified in §1410.6(b)(1).

Considered planted means land devoted to a conserving use during the crop year or during any of the 2 years preceding the crop year if the contract expired; cropland enrolled in CRP; or land for which the producer received for prevented planting credit in accordance with part 718 of this title.

Contour grass strip means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

Contract period means the term of the CRP contract.

Cost-share payment means, unless the context indicates otherwise, the payment made by CCC to assist CRP participants in installing the practices required in a CRP contract.

Cropland means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Eligible partner means a State, political subdivision of a State, nongovernmental organization, or an Indian Tribe.

Erodibility index (EI) means an index, as prescribed by CCC, used to determine the inherent erodibility from either from water or wind, but not both combined, of a soil in relation to the soil loss tolerance for that soil.

Federally-owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field border means a strip of permanent vegetation established at the edge or around the perimeter of a field the purpose of which is to provide food and cover for quail and upland birds in cropland areas.

Field Office Technical Guide (FOTG) means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared. (See *https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/* to access your State FOTG.)

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, that are designated as such in a conservation plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

Filter strip means a strip or area of vegetation immediately adjacent and parallel to an eligible water body, the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for such purpose.

Forb means any herbaceous plant other than those in the grass family.

Grassland means land described in §1410.6(d).

Grass waterway means a shaped or graded channel that is established with suitable vegetation to convey surface water from terraces, diversions, or other water concentrations without causing erosion or flooding using a broad and shallow cross section to a stable outlet.

Highly erodible land means land determined to have an EI equal to or greater than 8 on the acreage offered.

Improved rangeland or pastureland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage

quality and yields and is primarily consumed by livestock.

Indian Tribe means any Indian Tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Infeasible to farm means an area of land that is too small or isolated to be economically farmed, or is otherwise suitable for such classification.

Local FSA office means the FSA county office serving the area in which the FSA records are located for the farm or ranch.

Offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Perennial crop means a crop that is produced from the same root structure for 2 or more years.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees for the contract period.

Permanent wildlife habitat means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns for the contract period.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and specifications as a part of a conservation management system.

Prairie strip means a strip(s) of diverse, dense, herbaceous, predominately native perennial vegetation designed and positioned on the landscape to most effectively address soil erosion and water quality by intercepting surface and subsurface water flow to remove nutrients, sediment, organic matter, pesticides, and other pollutants by deposition, absorption, plant uptake, denitrification, and other processes, and thereby reduce pollution and protect surface and subsurface water quality while providing food and cover for wildlife.

Primary nesting season means the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by CCC in consultation with the State technical committee established as specified in part 610 of this title.

Riparian buffer means a strip or area of vegetation immediately adjacent and parallel to an eligible water body of sufficient width, the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, and to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Shrubland means land where the dominant plant species are shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include the following and no others unless approved in writing by CCC:

(i) American Indians or Alaskan Natives;

(ii) Asians or Asian-Americans;

(iii) Blacks or African Americans;

(iv) Hispanics; and

(v) Native Hawaiians or other Pacific Islanders.

Soil loss tolerance (T) means the maximum average annual erosion rate

specified in the FOTG that will not adversely impact the long-term productivity of the soil.

State means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

State Technical Committee means a committee established pursuant to part 610 of this title to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

Technical assistance means assistance in regard to determining the eligibility of land and practices, implementing and certifying practices, ensuring CRP contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with CRP to owners or operators, as approved by CCC, includes, but is not limited to:

(i) Technical expertise, information, and tools necessary for the conservation of natural resources on land;

(ii) Technical services provided directly to farmers, ranchers, and other eligible entities, including, but not limited to, conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(iii) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, including, but not limited to, technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Violation means an action or inaction by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share payments, incentive payments, or annual rental payments.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under CRP, CCC will enter into contracts with eligible producers to convert eligible land to an approved cover during the contract period in return for financial and technical assistance.

(b) A producer must obtain and adhere, for the contract period, to a conservation plan prepared in accordance with CCC guidelines and the other provisions of § 1410.22.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, including, but not limited to, tree planting.

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section the maximum cropland acreage that may be placed in CRP and the wetland reserve easements of WRP and ACEP, as appropriate, may not exceed 25 percent of the total cropland in the county. No more than 15 percent of the cropland in a county may be subject, in the aggregate, to a wetland reserve easement.

(b) The restrictions in paragraph (a) of this section:

(1) May be waived by CCC as follows:

(i) If such waiver would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title; or

(ii) If the cropland, in a county, is enrolled under provisions as specified in

§1410.90, provided that the county government concurs with such waiver.

(2) Do not apply to cropland that is:

(i) Subject to an easement and enrolled in CRP as a shelterbelt or windbreak; or

(ii) Designated with subclass w in the land capability classes IV through VIII because of severe use limitations due to soil saturation or inundation, as determined by NRCS.

(c) The restrictions on acreage enrollment in this section are in addition to any other restrictions imposed by law.

§ 1410.5 Eligible persons.

(a) To be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land seeks to participate without the owner's participation, then such operator must have operated such land for either at least 12 months prior to the close of the applicable signup period for enrollments under announced signup periods, or for at least 12 months prior to submitting an offer under continuous signup periods as provided in §1410.30(b); further, such operator must provide satisfactory evidence to CCC that such operator will be in control of such eligible land for the full term of the contract period;

(2) If an owner of eligible land, such owner must have owned such land for either at least 12 months prior to the close of the applicable signup period for enrollment under announced signup periods, or for at least 12 months prior to submitting an offer for continuous signup periods as provided in §1410.30(b), unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land, and the owner of the land, immediately before the foreclosure, exercised a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) The circumstances of the acquisition present adequate assurance that a new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, then the participation of an eligible owner or operator is also required.

(b) The provisions of this section do not apply to beginning, socially disadvantaged, or veteran farmers or ranchers who are eligible participants in the Transition Incentives Program as specified in §1410.64.

§ 1410.6 Eligible land.

(a) The provisions of paragraphs (b), (c), and (d) of this section do not apply to:

(1) The Transition Incentives Program as specified in §1410.64;

(2) The Soil Health and Income Protection Pilot Program as specified in §1410.70; or

(3) The Clean Lakes, Estuaries, and Rivers 30 (CLEAR 30) Pilot Program as specified in §1410.80.

(b) To be eligible for CRP, land must be one of the following:

(1) Cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 4 of the 6 crop years from 2012 through 2017, provided that field margins that are incidental to the planting of crops may also be considered qualifying cropland; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity;

(2) Marginal pasture land that:

(i) Is located immediately adjacent and parallel to an eligible stream, other water body, or wetland, but excluding such areas as gullies or sod waterways or similar areas; and

(ii) Is capable, when permanent grass, forbs, shrubs, or trees are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, of either substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent eligible stream or water body, or serving other water quality purposes;

(3) Acreage enrolled in CRP during the final year of the contract period, unless such land is federally-owned, provided the scheduled expiration date of the current CRP contract is before

the effective date of the new CRP contract;

(4) Land that meets the criteria specified in paragraph (d) of this section; or

(5) Land that meets all of the criteria in paragraphs (b)(5)(i) through (iii) of this section, which land will then be considered as land enrolled in CRP in the final year of the contract period, and therefore will be eligible to be offered for enrollment in CRP until September 30, 2020, provided the effective starting date of the new CRP contract is on or before October 1, 2020:

(i) The land was enrolled in CRP under a CRP contract, with a contract period of greater than 14 years, that expired on September 30, 2017, or September 30, 2018;

(ii) There was no opportunity for reenrollment of the land in CRP prior to the end of the contract period; and

(iii) The conservation practice and approved cover under the expired CRP contract has been maintained in accordance with the terms of the expired CRP contract.

(c) Land qualifying under paragraph (b)(1) of this section must also meet at least one of the following criteria to be eligible for CRP:

(1) Be a field or portion of a field that:

(i) Is suitable for use as a permanent wildlife habitat, prairie strip, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, field border, or other suitable uses;

(ii) Poses an off-farm environmental threat or a threat of continued degradation of productivity due to soil salinity if permitted to remain in production, including any applicable recharge area;

(iii) Is an area determined eligible for CRP based on wetland or wellhead protection area criteria; or

(iv) Is suitable for use as a filter strip or riparian buffer, and the land:

(A) Is located immediately adjacent and parallel to an eligible stream, other water body, or wetland, but excluding such areas as gullies or sod waterways or similar areas; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration, of either substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent eligible stream, or water body, or serving other water quality purposes;

(2) Be non-irrigated or irrigated cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer, only as approved by CCC;

(3) Be a portion of the field not enrolled in CRP, if either:

(i) More than 50 percent of the field is enrolled as a riparian buffer or filter strip; or

(ii) More than 75 percent of the field is enrolled as a conservation practice other than a riparian buffer or filter strip; and

(iii) With respect to both paragraphs (c)(3)(i) and (ii) of this section, the remainder portion of the field is determined to be infeasible to farm and enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate approved by CCC;

(4) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(5) Be devoted to certain covers that are established and maintained according to the FOTG, provided such land is not required to be maintained as such under any life-span obligations;

(6) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the acreage offered;

(7) Be within a State or federally identified wellhead protection area;

(8) Be within a designated conservation priority area; or

(9) Notwithstanding paragraph (b)(1) of this section, be cropland devoted to a perennial crop; such cropland will only be eligible for continuous signup practices authorized by §1410.30(b) and practices authorized under a Conservation Reserve Enhancement Program agreement as specified in §1410.90.

(d) Notwithstanding paragraph (b) or (c) of this section, to be eligible under a grassland signup as specified in §1410.30(c), the land must be one of the following:

(1) Land that:

(i) Contains forbs or shrubland, including improved rangeland and pastureland, for which grazing is the predominant use;

(ii) Is located in an area historically dominated by grassland; and

(iii) Is able to provide habitat for animal and plant populations of significant ecological value if the land is retained in its current use or restored to a natural condition; or

(2) Land that is enrolled in CRP in the final year of the contract period, provided the scheduled expiration date of the current CRP contract is the day before the effective starting date of the new CRP contract, and the provisions of paragraph (d)(1) of this section are met.

(e) Notwithstanding paragraphs (b), (c), and (d) of this section and §§1410.64, 1410.70, and 1410.80, land will be ineligible for enrollment if the land is one of the following:

(1) Federally-owned land;

(2) Land on which the use of the land is either restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities, or requires any resource-conserving measures, during any part of the contract period;

(3) Land already enrolled in the CRP, unless authorized by paragraph (b)(3) of this section and §1410.80;

(4) Land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, and the owners or operators of such land have been notified in writing of such requirements, except, such land may be eligible for enrollment in CRP if:

(i) The land is, at the time of offer, enrolled in CRP under an approved Conservation Reserve Enhancement Program agreement that was in effect on December 20, 2018, and was initially approved before January 1, 2014, including any amended or successor Conservation Reserve Enhancement Program agreement; provided, that the CRP contract under which the land is enrolled is in the final year of the contract period, and the scheduled expiration date of the current CRP contract is before the effective starting date of the new CRP contract; or

(ii) The land is such other land in the State that CCC determines is both otherwise eligible for CRP and appropriate for enrollment in CRP;

(5) Land that is required to be used, or otherwise dedicated to mitigate actions undertaken, or planned to be undertaken, on other land, or to mitigate other actions taken by landowners or operators; or

(6) Land devoted to hardwood trees that has been re-enrolled in CRP one or more times while it was devoted to hardwood trees; however, such ineligibility does not extend to:

(i) Forested wetlands enrolled under a Conservation Reserve Enhancement Program agreement or under a continuous signup as specified in §1410.30(b);

(ii) Riparian buffers; and

(iii) Shelterbelts.

[84 FR 66819, Dec. 6, 2019, as amended at 86 FR 70705, Dec. 13, 2021]

§1410.7 Duration of contracts.

(a) In general, except as provided in paragraphs (b) and (c) of this section and §§1410.70 and 1410.80, the CRP contract period will be for a term of at least 10 years, and up to no more than 15 years.

(b) The CRP contract period for land enrolled under a grassland signup as specified in §1410.30(c) will be for a term of 10 years or 15 years, as requested by the producer.

(c) CRP contracts for land devoted to hardwood trees, shelterbelts, windbreaks, and wildlife corridors will be for a term of 10 years to 15 years, as requested by the producer.

(d) All CRP contracts will expire on September 30 of the final calendar year of the contract period.

§1410.8 Conservation priority areas.

(a) Subject to CCC approval, a State agency may submit proposals for conservation priority areas within guidelines established by CCC. Such submission must clearly define conservation and environmental objectives, and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, will not total more than 25 percent of the cropland in a State unless there are

identified and documented exceptional environmental needs.

(b) A region may be eligible for designation as a priority area only if the region has actual significant adverse water quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(c) Conservation priority area designations will expire after 5 years unless re-designated, except they may be withdrawn before 5 years by CCC.

(d) In those areas designated as conservation priority areas under this section, cropland is considered eligible for enrollment according to §1410.6(c)(8) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered).

§1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such CRP contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such land from CRP to a wetland reserve easement under WRP or ACEP, as appropriate. Transferred land will be terminated from CRP effective the day a WRP or ACEP wetland reserve easement is filed. Participants will receive a prorated CRP annual payment for the part of the year the land was enrolled in CRP as specified in §1410.42. Cost-share payments or applicable incentive payments need not be refunded unless specified by CCC.

(b) [Reserved]

§1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, eligible land may be enrolled in the CRP through the Farmable Wetlands Program (FWP).

(b) Eligible owners and operators may enroll land in FWP provided that the land:

(1) Is a wetland, including a converted wetland, that has been planted or considered planted to an agricultural commodity during at least 3 of the immediately preceding 10 crop years and that does not exceed the size limitations specified in paragraph (d) of this section;

(2) Is enrolled to be a constructed wetland that is to be developed so as to receive surface and subsurface flow from row crop agricultural production and is designed to provide nitrogen removal in addition to other wetland functions and that does not exceed the size limitations specified in paragraph (d) of this section;

(3) Was a commercial pond-raised aquaculture facility in any year during the period of calendar years 2002 through 2007; or

(4) Was cropped, after January 1, 1990, and before December 31, 2002, at least 3 of 10 crop years, was subject to the natural overflow of a prairie wetland, and does not exceed the size limitations specified in paragraph (d) of this section.

(c) In addition, land may be enrolled through FWP if the land is buffer acreage that provides protection for and is contiguous to land otherwise eligible under paragraph (b) of this section, subject to the provisions of paragraph (d) of this section.

(d) Total enrollment in CRP under this section may not exceed 750,000 acres. In addition, the maximum size of land enrolled under this section may not exceed:

(1) 40 contiguous acres per tract, for land made eligible by paragraph (b)(1) of this section;

(2) 40 contiguous acres per tract, for land made eligible by paragraph (b)(2) of this section;

(3) 20 contiguous acres for land made eligible by paragraph (b)(4) of this section, not to exceed 40 acres per tract; or

(4) A suitable buffer for lands added under paragraph (c) of this section.

(e) All participants subject to a CRP contract under this section must agree to establish and maintain, as appropriate, the practice described in paragraph (b) of this section in accordance with FOTG including, as appropriate, restoring the hydrology of the wetland

and establishing vegetative cover (which may include emerging vegetation in water and bottomland hardwoods, cypress, and other appropriate tree species in shallow water areas).

(f) Offers for contracts under this section must be submitted under continuous signup provisions as specified in § 1410.30(b).

(g) The annual rental payment for land enrolled under this section will be determined in accordance with the provisions of § 1410.42 for cropland. In addition, any incentive payments in the form of annual rental payments provided for enrolling filter strips under this part will also be provided to participants who enroll land under this section, provided the participant has a share of the annual rental payment greater than zero.

§ 1410.13 Grassland enrollments and permitted uses.

(a) Land may be enrolled in CRP under a grassland signup as specified in §§ 1410.30(c) and 1410.31(e) and (f).

(b) Grassland enrollments will generally be administered under all the provisions of this part, except where specific provisions apply only to grassland enrollments.

(c) Land enrolled in CRP under a grassland signup may be eligible for the Transition Incentives Program as specified in § 1410.64.

(d) The following activities may be permitted on grassland enrolled in CRP according to an approved conservation plan:

(1) Common grazing practices, including maintenance and necessary cultural practices, in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species appropriate to the locality;

(2) Haying, mowing, or harvesting for seed production, subject to appropriate restrictions during the primary nesting season;

(3) Fire pre-suppression, fire-related rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities; and

(5) Other activities, when the manner, number, intensity, location, operation, and other features associated with such activity will not adversely affect the grassland resources or related conservation values protected under the CRP contract.

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such CRP contract, in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control, and CCC agrees to a modified plan; however, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if:

(i) The failure to plant or establish such approved cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the CRP contract on which the participant could practicably plant or establish to such approved cover, is planted or established to such approved cover; and

(iii) The land on which the participant was unable to plant or establish such approved cover is planted or established to such approved cover after the wet or drought conditions that prevented the planting or establishment subside;

(3) Establish temporary vegetative cover either when required by the conservation plan or if the permanent approved cover cannot be timely established;

(4) Comply with part 12 of this title;

(5) Not allow grazing, harvesting, or other commercial or agricultural use of the land subject to such CRP contract, or the cover on such land, except as specified in this part;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such CRP contract, and take other actions that may be required by CCC to achieve the desired environmental benefits, and to maintain the productive capability of the soil throughout the contract period;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(8) Control, on land subject to such CRP contract, all weeds, insects, pests, and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as specified in the CRP conservation plan, and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other similar conservation factors;

(9) Be jointly and severally responsible, if the participant has a share of the annual rental payment greater than zero, with the other participants on the CRP contract, for compliance with the provisions of such CRP contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the CRP contract and this part; and

(10) On land devoted to trees, excluding windbreaks and shelterbelts, carry out thinning and similar conservation practices, as provided in the conservation plan to enhance the conservation benefits and wildlife habitat resources applicable to the CRP conservation practice on the land, and to promote forest management.

(b) [Reserved]

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC will:

(a) Share up to 50 percent of the cost with participants of installing eligible practices specified in the conservation plan for which CCC determines that cost sharing is appropriate and in the public interest, and at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to eligible participants for a period of years not in excess of the contract period an annual rental payment, including applicable and available incentive payments, in such amounts as may be specified in the CRP contract.

§ 1410.22 CRP conservation plan.

(a) The producer must obtain a CRP conservation plan that complies with CCC guidelines and is approved by NRCS.

(b) The practices included in the conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public wellhead, improve grassland, or achieve other environmental benefits as applicable. The participant must undertake maintenance activities on the land as needed throughout the contract period to implement the conservation plan.

(c) If applicable, a tree planting plan or forest stewardship plan must be developed and included in the conservation plan. Such tree planting or forest stewardship plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the conservation plan must address the goals included in the conservation priority area designation authorized under §1410.8.

(e) Except for land enrolled under a grassland signup, as specified in §1410.30(c), management activities must be conducted as needed throughout the contract period in accordance with an approved conservation plan. However, the planned management activity is not required in the case where a natural disaster or adverse weather event occurs that has the same effect of the planned management activity. CCC will not provide any cost-share payment for any management activities.

§ 1410.23 Eligible practices.

(a) Eligible practices are those CRP practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, trees, permanent wildlife habitat, and grassland improvements;

(2) Meet other environmental benefits, as applicable, for the CRP contract period; and

(3) Accomplish other purposes of CRP.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by CCC for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover will not include ponds for the purpose of watering livestock, irrigating crops, or raising aquaculture for commercial purposes.

§ 1410.30 Signup.

(a) Offers for CRP contracts may be submitted only during signup periods as announced periodically by CCC, but not less often than once each year. Acceptability of otherwise eligible offers will be determined as provided in § 1410.31.

(b) Notwithstanding paragraph (a) of this section, CCC may hold a continuous signup for land to be devoted to particular uses. Generally, continuous signup is limited to those offers that provide appropriate environmental benefits, as determined by CCC, or that would otherwise rank highly under § 1410.31(b) and may include high priority practices including, but not limited to, filter strips, riparian buffers, shelterbelts, field windbreaks, living snowfences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, prairie strips, field borders, and practices to benefit certain approved wetlands and public wellhead protection areas.

(c) Notwithstanding paragraph (a) or (b) of this section, offers to enroll acreage specified in § 1410.6(d) may be submitted only during signup periods as announced by CCC. At least 1 ranking period will be announced subsequent to the announcement of offers specified in paragraph (a) of this section. Eligible offers will be evaluated and ranked as provided in § 1410.31(e) and (f).

§ 1410.31 Acceptability of offers.

(a) Producers may submit offers for the amounts they are willing to accept as rental payments to enroll their acreage in CRP. The offers will, to the extent practicable, be evaluated on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and provided that the offer is not in excess of the maximum acceptable payment rate established by CCC for the acreage offered. Acceptance or rejection of any offer, however, will be in the sole discretion of CCC and offers may be rejected for any reason as determined needed to accomplish the goals of CRP.

(b) In evaluating offers, different factors may be considered by CCC for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Soil productivity;

(5) Likelihood that enrolled land will remain in non-agriculture use beyond the contract period, considering, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan; and

(6) Cost of enrolling acreage in CRP.

(c) Notwithstanding paragraph (b) of this section, when all other appropriate factors are equivalent, CCC may give preference to offers from residents of the county or contiguous county where the offered land is located.

(d) Notwithstanding paragraph (a) of this section, acreage determined eligible for continuous signup, as provided in § 1410.30(b), may be automatically accepted in CRP if the:

(1) Land is eligible under § 1410.6;

(2) Producer is eligible under § 1410.5; and

(3) Producer accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in CRP or a lesser rate.

(e) For grassland signup offers:

(1) Notwithstanding paragraph (a) of this section, offers to enroll in CRP under grassland signup, as specified in § 1410.30(c), will be evaluated and ranked during an announced ranking period, on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and further provided that:

(i) The offered land is eligible under § 1410.6(d);

(ii) The producer is eligible under § 1410.5;

(iii) The producer accepts either the maximum payment rate CCC is willing

to offer to enroll the acreage in CRP, or a lesser rate; and

(iv) The offer ranks above the minimum ranking level needed for offer acceptance, as determined by CCC.

(2) Notwithstanding paragraph (e)(1) of this section, acceptance or rejection of any offer will be at the sole discretion of the CCC, and offers may be rejected for any reason as determined necessary and appropriate to accomplish the goals of CRP.

(f) In ranking and evaluating grassland signup offers, different factors may be considered by CCC for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

(1) Existence of expiring CRP land;

(2) Land at risk of development or conversion; and

(3) Land of ecological significance, including land that:

(i) May assist in the restoration of threatened or endangered species under the Endangered Species Act of 1973;

(ii) May assist in preventing a species from being listed as a threatened or endangered species under the Endangered Species Act of 1973; or

(iii) Improves or creates wildlife habitat corridors.

§ 1410.32 CRP contract.

(a) In order to enroll land in CRP, the producer must enter into a contract with CCC.

(b) The CRP contract is comprised of:

(1) The terms and conditions for participation in CRP; and

(2) The CRP conservation plan.

(c) For offers:

(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in § 1410.30.

(2) An offer to enroll land in CRP will be irrevocable for such period as is determined and announced by CCC. The producer will be liable to CCC for liquidated damages if the producer revokes an offer during the period in which the offer is irrevocable unless CCC determines to waive such liquidated damages.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the land to be enrolled in the CRP and other eligible producers, if applicable.

(e) For the termination of CRP contracts:

(1) CRP contracts may be terminated in whole or in part by CCC before the end of the contract period if:

(i) The owner loses control of or transfers all or part of the acreage under the CRP contract and the new owner does not wish to continue the CRP contract;

(ii) The participant voluntarily requests in writing to terminate the contract, in whole or in part, and obtains approval from CCC;

(iii) The participant is not in compliance with the terms and conditions of the CRP contract;

(iv) All or part of the acreage under the CRP contract is enrolled in another Federal, State or local conservation program;

(v) The CRP practice fails or is not established after a certain time period and the cost of restoring the practice outweighs the benefits received from the restoration;

(vi) The CRP contract was approved based on erroneous eligibility determinations; or

(vii) Such termination is needed in the public interest, or is otherwise necessary and appropriate to further the goals of CRP.

(2) A participant whose CRP contract has been terminated, in whole or in part in accordance with paragraph (e)(1) of this section, must refund all or part of the payments made by CCC with respect to the CRP contract, plus interest, and must also pay liquidated damages as provided for in the CRP contract, if directed to do so by CCC.

(f) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator becomes a successor to such contract within 60 days, or such other time as CCC determines to be appropriate, then such participant will not be required to refund previous payments received under the contract; provided, that no refunds of previous payments received will be required if such participant sells such land to, or such land is purchased for, the United

States Fish and Wildlife Service; provided further, that no refunds of previous payments will be required if the person or entity to whom all or part of the right and interest in, or right of occupancy of, land subject to such contract reaches an agreement with CCC to modify the contract in a way that is consistent with the objectives of the program.

(g) The participants on a CRP contract will not be in violation of the terms of the CRP contract if:

(1) During the final year of the CRP contract period the land is enrolled in the Environmental Quality Incentives Program or Conservation Stewardship Program, as specified in parts 1466 and 1470 of this chapter, and the participant begins establishment of a practice under such programs; or

(2) During the 3 years prior to the end of the CRP contract period, the participant begins the certification process under the Organic Foods Production Act of 1990.

§ 1410.33 Contract modifications.

(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in CRP, provided that such modification will be considered a partial termination for purposes of § 1410.32(e);

(2) Permit the production of an agricultural commodity under exceptional circumstances during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of CRP; or

(4) During the last 2 years of the CRP contract period, facilitate a transition of land subject to the contract to a beginning, socially disadvantaged, or veteran farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods. For purposes of this paragraph (a)(4), ''sustainable grazing and crop production methods'' will be considered methods that would be designed as part of an overall plan defined on an ecosystem level to be useful in the creation of integrated systems of plant and animal production practices that have a site specific application that would:

(i) Enhance the environment and the natural resource base;

(ii) Use nonrenewable resources efficiently; and

(iii) Sustain the economic viability of the farming operation.

(b) CCC may modify CRP contracts to add or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) For the transfer of land into WRP, ACEP, or other Federal or State programs:

(1) CCC may terminate or modify a CRP contract in whole or in part when the land is transferred into WRP, ACEP, or other Federal or State programs.

(2) For contracts terminated or modified for enrollment in other Federal or State programs, participants will not be required to refund CRP payments or pay interest and liquidated damages to CCC, as otherwise required under this part.

(3) Notwithstanding paragraph (d)(2) of this section, participants must refund CRP signup incentive payments if land in CRP containing a wetland reserve easement is enrolled in ACEP.

(e) During the final year of the CRP contract period, CCC will allow an owner or operator to make conservation and land improvements for economic use that facilitate maintaining protection of enrolled land after expiration of the CRP contract, but only under the following conditions:

(1) All provisions are identified in an approved CRP conservation plan;

(2) Land improved in accordance with paragraph (e) of this section will not be eligible to be re-enrolled in CRP for 5 years after end of the CRP contract period; and

(3) CCC will reduce the final annual rental payment otherwise payable under the CRP contract by an amount

commensurate with the economic value of the activity carried out.

§ 1410.40 Cost-share payments.

(a) Cost-share payments will be made available to the participant if an eligible practice, or an identifiable unit thereof, including fencing and water distribution, has been installed in compliance with the appropriate standards and specifications. Cost-share payments are not subject to the provisions of § 1410.42(d).

(b) Except as provided in paragraph (c) of this section, cost-share payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any other Federal agency.

(c) Cost-share payments may be authorized for the replacement or restoration of practices for which cost-share payments have been previously allowed under CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads, or other conservation measures approved by CCC;

(2) The failure of the original practice was due to reasons beyond the control of the participant; and

(3) The benefits that would be received from the replacement or restoration of the practice outweighs the cost of replacing or restoring the practice.

(d) Limitations on cost-share payments include:

(1) The cost-share payment made to a participant will not exceed the participant's actual contribution to the eligible costs of establishing the practice.

(2) The amount of the cost-share payments, including practice incentive payments, may not be an amount that, when added to such assistance from other sources, exceeds 100 percent of the actual cost of establishing the practice.

(e) CCC will not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the land subject to such CRP contract. Participants must refund to CCC all cost-share payments received under this part if other Federal cost-share assistance is received with respect to the same land.

(f) CCC may make cost-share payments for thinning of existing tree stands to benefit wildlife habitat and other resource conditions on enrolled land.

(g) In addition to cost-share payments, a practice incentive payment will be made available to a participant to whom CCC has made a cost-share payment after a determination that an eligible practice has been installed in compliance with the appropriate standards and specifications. The practice incentive payment will be considered a cost-share payment for purposes of this part, and is not subject to the provisions of § 1410.42(d). A practice incentive payment will be provided only for land enrolled under:

(1) Continuous sign-up as provided in § 1410.30(b); or

(2) The Conservation Reserve Enhancement Program as provided in § 1410.90.

§ 1410.41 Levels and rates for cost-share payments.

(a) CCC will not pay more than 50 percent of either the actual or average cost of installing eligible practices specified in the conservation plan.

(b) The average cost of performing a practice may be based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county.

(c) If there is any other sources of cost-share assistance:

(1) A participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP.

(2) A participant may not receive or retain CRP cost-share payments if other Federal cost-share assistance is provided for such acreage under any law.

(d) Notwithstanding paragraphs (a) and (b) of this section, cost-share payments for eligible seed related to the

establishment of approved cover will not exceed 50 percent of the actual cost of the eligible seed mixture.

(e) Practice incentive payments will not exceed an amount equal to 50 percent of the actual cost of installing the eligible practice specified in the conservation plan.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments will be made in such amount and in accordance with such time schedule as specified in the CRP contract.

(b) Annual rental payments are based on a weighted average soil rental rate, marginal pastureland rental rate, or grassland rate, as appropriate, and may include an incentive payment as a portion of the annual payment for specified practices. A per-acre national maximum rental payment rate may also be established by CCC for certain categories of CRP offers and contracts.

(c) The annual rental payment will be divided among the participants on a CRP contract as agreed to in such CRP contract.

(d) Limitations on annual rental payments include:

(1) The maximum amount of annual rental payments that a person or entity may receive, directly or indirectly, under CRP for any fiscal year must not exceed $50,000. The regulations in part 1400 of this chapter will be used to determine if the limit has been reached or exceeded.

(2) Notwithstanding paragraph (d)(1) of this section, annual rental payments received by a rural water district or association for land enrolled in CRP for the purpose of protecting a wellhead may exceed $50,000.

(e) In the case of a contract succession, annual rental payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments will be divided in such manner deemed appropriate by CCC, and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC will prepare a schedule for each county that shows the maximum soil rental rate CCC may pay and which may be supplemented to reflect special contract requirements. Such schedule may be calculated for cropland based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. For marginal pastureland, rental rates will be based on estimates of the prevailing rental values of marginal pastureland in riparian areas. Grassland rental rates will be based on not more than 75 percent of the estimated grazing value of the land. The schedule will be available in the local FSA office and will indicate, when appropriate, that:

(1) Offers by producers who request rental payments greater than the maximum payment rate for their offer will be rejected;

(2) Offers submitted under continuous signup authorized at § 1410.30(b) may be accepted without further evaluation when the requested payment rate is less than or equal to the maximum payment rate for the offer; and

(3) Otherwise qualifying offers will be ranked competitively based on factors established under § 1410.31 in order to provide the most cost-effective environmental benefits.

(g) In the case of an owner or operator who transfers acreage to a wetland reserve easement in accordance with § 1410.10, annual rental payments will be prorated based on the actual number of days the transferred acreage was enrolled in CRP.

§ 1410.44 Average adjusted gross income.

(a) Benefits under this part will not be available to persons or entities whose average adjusted gross income exceeds $900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, or who otherwise do not meet the AGI requirements specified in part 1400 of this chapter.

(b) The limit specified in paragraph (a) of this section may be waived in accordance with part 1400, subpart F, of this chapter.

§ 1410.45 Incentive payments.

(a) A signup incentive payment will be made to eligible participants only

for the initial enrollment of certain land that is enrolled under:

(1) A continuous signup authorized in §1410.30(b) for land to be devoted to particular uses as determined by CCC; and

(2) A Conservation Reserve Enhancement Program as specified in §1410.90 for land to be devoted to particular uses as determined by CCC.

(b) The signup incentive payment will be:

(1) An amount equal to 32.5 percent of the amount of the first annual rental payment for the land referred to in paragraph (a) of this section, as determined by CCC;

(2) Divided among the participants on a CRP contract in accordance with their share of the annual rental payment as agreed to in such CRP contract;

(3) Considered an annual rental payment and thus subject to the provisions in §1410.42(d); and

(4) Made only after the CRP contract is approved by CCC.

(c) A signup incentive payment will not be made for land that was previously enrolled in CRP or land currently enrolled in CRP that is re-enrolled.

(d) CCC may make incentive payments to owners and operators of enrolled land in an amount sufficient to encourage proper tree thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat. Incentive payments for such tree thinning and other practices will:

(1) Not exceed 100 percent of the total cost of the practice;

(2) Only be available for practices outlined in the tree planting plan under the approved CRP conservation plan;

(3) Only be made to the extent that funds are available; and

(4) Not exceed $200,000 per person or entity.

(e) Additional financial incentives may be provided to participants whose contracts are expected to provide especially high environmental benefits. Such incentives will be considered annual rental payments and subject to the provisions in §1410.42(d).

§1410.51 Transfer of land.

(a) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, such new owner or operator may be approved by CCC as a participant to a new CRP contract for the transferred land. Such new owner or operator must assume all obligations of the CRP contract of the previous participant.

(b) Cost-share payments will be made by CCC to the participant who established the practice.

(c) Annual rental payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in §1410.42.

(d) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such CRP contract within 60 days, or such other time period as CCC determines to be appropriate, then such CRP contract will be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage; and

(2) Will refund all previous payments received under the CRP contract by the participant(s) or prior participants, plus interest and liquidated damages, except as otherwise agreed to by CCC.

(e) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the CRP contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the CRP contract participants, such operator may continue to receive payments under such CRP contract if:

(1) The property is maintained in accordance with the terms of the CRP contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such Federal agency.

§ 1410.52 Violations.

(a) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract in whole or in part.

(b) If the CRP contract is terminated in whole or in part by CCC in accordance with paragraph (a) of this section, the participant will:

(1) Forfeit all rights to further payments under such CRP contract for the terminated acres, and refund all payments previously received for the terminated acres, plus interest; and

(2) Pay liquidated damages to CCC in an amount as specified in the contract.

§ 1410.53 Executed CRP contract not in conformity with this part.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is found to contain material errors of fact or is not in conformity with this part, CCC may terminate or offer to modify the CRP contract in whole or in part.

§ 1410.54 Performance based upon advice or action of the U.S. Department of Agriculture.

The provisions of part 718 of this title relating to performance based upon the action or advice of an authorized representative of the U.S. Department of Agriculture are applicable to this part.

§ 1410.55 Access to land under CRP contract.

(a) Any representative of the U.S. Department of Agriculture, or designee thereof, will, for purposes related to CRP, be provided by the producer or participant, as the case may be, with access to land that is:

(1) The subject of an offer for a contract under this part; or

(2) Under a CRP contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the producer or participant will provide the representative with access to examine records for the land to determine land classification, erosion rates, or for other purposes, and to determine whether the terms and conditions of the CRP contract are being met.

§ 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part will be divided as specified in the applicable CRP contract and CCC will ensure that producers who would have an interest in acreage being offered receive treatment that is equitable. CCC may refuse to enter into a contract when there is a disagreement among producers seeking enrollment as to a producer's eligibility to participate in the CRP contract as a tenant and there is insufficient evidence to indicate whether the producer seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the CRP contract period and the administrator of the estate fails to succeed to the contract; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by CCC.

(c) In addition to paragraph (b) of this section, tenants must maintain their tenancy throughout the CRP contract period in order to remain on a CRP contract. Tenants who fail to maintain tenancy on the acreage under CRP contract, including failure to comply with applicable State law, may be removed from a CRP contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a party to the CRP contract.

§ 1410.57 Payments not subject to claims.

Subject to part 3 of this title, any payment or portion thereof due any person under this part will be allowed without regard to questions of title under State law, and without regard to

any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Participants may assign the right to receive cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or producer seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for CCC may be appealed in accordance with procedures established in part 614 of this title.

§ 1410.60 Scheme or device.

(a) If CCC determines that a person has employed a scheme or device to defeat the purposes of this part, or any part of any CCC or USDA program, payment otherwise due or paid such person during the applicable period may be required to be refunded with interest as determined by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share, incentive, or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to a CRP contract, and who succeeds to the CRP contract, must report in writing to CCC any interest of any kind in such land that is retained by a previous participant. The interest will include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in the land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in the land other than an interest in the appreciation in the value of the land occurring after the loan was made. Failure to fully disclose interest will be considered a scheme or device.

§ 1410.61 Filing of false claims.

If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the CRP contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances must be refunded, plus interest as determined by CCC and any amounts otherwise due to the participant will be withheld. The remedies provided for in this section will be in addition to any and all other remedies, criminal and civil, that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part will be paid to the participant's successor(s), as specified in part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part will be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part will be in addition to any other remedy, including, but not limited to, criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(d) When an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with §1410.51, refunds may not be required from any participant on the contract to the extent CCC determines that waiver of such refund is appropriate.

(e) Cropland enrolled in CRP will be classified as cropland for the time period it is enrolled in CRP. After the CRP contract ends, such land will be removed from the classification of

cropland if the county committee determines the land no longer meet the definition of cropland in part 718 of this title.

(f) As determined by CCC, incentives may be authorized to foster opportunities for Indian Tribes and beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers, and to enhance long-term environmental goals.

§ 1410.63 Permissive uses.

(a) Unless specified in this part or otherwise approved by CCC, no uses of any kind are authorized on CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:

(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;

(2) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves; and

(3) The CRP cover is maintained according to the conservation plan.

(c) No barrier fencing or boundary limitations that prohibit wildlife access to or from the CRP acreage are allowed, unless required by State law.

(d) Wind turbines and associated access to the wind turbines may be installed on CRP acreage in numbers and locations as determined appropriate by CCC considering the location, size, and other physical characteristics of the land, the extent to which the land contains threatened or endangered wildlife and wildlife habitat, and the purposes of CRP, but only in exchange for a 25 percent reduction in the annual rental payment for the acres covered by the wind turbine and associated access acreage.

(e) The sale of carbon, water quality, or environmental credits may be permitted by CCC.

(f) There are specific activities that are permitted on specific land:

(1) The permitted activities provisions of paragraphs (f)(2) and (3) of this section do not apply to land enrolled under:

(i) A grassland signup authorized by § 1410.30(c);

(ii) The Soil Health and Income Protection Pilot Program described in § 1410.70;

(iii) The Conservation Reserve Enhancement Program described in § 1410.90:

(A) Except for land enrolled under Conservation Reserve Enhancement Program agreements executed before December 20, 2018; provided, that such agreements may be amended by mutual agreement to disallow such otherwise permitted activities; or

(B) Unless the approved Conservation Reserve Enhancement Program agreement under which the land was enrolled specifically permits such activity; and

(iv) A State Acres for Wildlife Enhancement project, unless the State Acres for Wildlife Enhancement project under which the land was enrolled specifically permits such activity.

(2) The following activities may be permitted on CRP acreage according to an approved conservation plan, without any reduction to the annual rental payment:

(i) Emergency haying, emergency grazing, or emergency use of the forage in response to a localized or regional drought, flooding, wildfire, or other emergency as determined by CCC on all practices, outside the primary nesting season, when:

(A) All or any part of the county in which the CRP acreage is located is designated as D2 (severe drought) or greater according to the United States Drought Monitor;

(B) There is at least a 40 percent loss in forage production in the county in which the CRP acreage is located; or

(C) CCC determines that CRP can assist in the response to a natural disaster event without permanent damage to the established cover;

(ii) Emergency grazing on all practices during the primary nesting season if payments are authorized for the county under the Livestock Forage Disaster Program under part 1416 of this chapter, at 50 percent of the normal carrying capacity determined in accordance with part 1416 of this chapter;

(iii) Emergency haying on certain practices, as determined by CCC, only outside the primary nesting season, if payments are authorized for the county under the Livestock Forage Disaster Program under part 1416 of this chapter, but on not more than 50 percent of the eligible CRP contract acres;

(iv) Grazing of all practices only outside the primary nesting season if included as an approved CRP contract management activity in accordance with § 1410.22;

(v) The intermittent and seasonal grazing of vegetative buffers, only outside the primary nesting season, that are incidental to agricultural production on land adjacent to the buffer provided such grazing:

(A) Does not destroy the permanent vegetative cover; and

(B) Retains suitable vegetative structure for wildlife cover and shelter outside the primary nesting season; and

(vi) Grazing on all practices only outside the primary nesting season if conducted by a beginning farmer or rancher who is a participant on the CRP contract with a share of the rental payment greater than zero.

(3) The following activities may be permitted on CRP acreage according to an approved conservation plan, but only in exchange for a 25 percent reduction to the annual rental payment for the acres on which the permitted activity occurred:

(i) Grazing of all practices not more frequently than every other year on the same land, except that during the primary nesting season the grazing will be subject to a 50 percent reduction in the stocking rate, as determined by CCC;

(ii) Haying and other commercial use (including the managed harvesting of biomass, but not the harvesting of vegetative cover) of all practices, on the condition the activity:

(A) Is completed only outside the primary nesting season;

(B) Occurs not more than once every 3 years; and

(C) Maintains 25 percent of the total CRP contract acres unharvested, in accordance with a conservation plan that provides for wildlife cover and shelter; and

(iii) Annual grazing of all practices, only outside the primary nesting season for the control of invasive species.

(g) Not withstanding paragraph (f) of this section, haying and grazing will not be permitted on any land enrolled in CRP if such haying and grazing for that year would cause long-term damage to the vegetative cover on that land.

§ 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, all the following must be met:

(1) The land must be enrolled in CRP;

(2) The conditions for the timing of the sale or lease of the land and to whom it must be sold or leased are:

(i) Beginning on the date of the end of the CRP contract period, the land must be sold or leased (under a long-term lease, or a lease with an option to purchase the land, including a lease with a term of less than 5 years and an option to purchase the land) to a beginning, veteran, or socially disadvantaged farmer or rancher who will return some or all of the land to production using sustainable grazing or crop production methods; and

(ii) The sale or lease, as applicable, must take effect on the day immediately after the end of the CRP contract period;

(3) The CRP contract is modified in accordance with § 1410.33(a)(4);

(4) The land is not subject to an easement or other restriction that prohibits the use of the land allowed under this section; and

(5) The beginning, veteran, or socially disadvantaged farmers or ranchers must:

(i) Certify that they meet the definition of either a beginning or veteran farmer or rancher as defined in part 718 of this title, or a socially disadvantaged farmer or rancher as defined in § 1410.2;

(ii) Obtain an approved conservation plan prior to approval of the Transition Incentives Program contract; and

(iii) Implement sustainable grazing or crop production on land not re-enrolled in CRP in compliance with the conservation plan by the time specified in the conservation plan.

(b) Beginning in the last 2 years of the CRP contract period, the beginning, veteran, or socially disadvantaged farmer or rancher may:

(1) In conjunction with the contract participants, make conservation and land improvements, including preparing to plant a crop, that are consistent with the conservation plan; and

(2) Begin the organic certification process under the Organic Foods Production Act of 1990.

(c) Eligible beginning, veteran, or socially disadvantaged farmers or ranchers may be eligible immediately to reenroll certain partial field conservation practices in CRP, in accordance with the conservation plan and the provisions of this part, following the expiration of the CRP contract, provided that the beginning, veteran, or socially disadvantaged farmer or rancher has control of the land and meets all other qualifying conditions specified in this part.

(d) Eligible beginning, veteran, or socially disadvantaged farmers or ranchers will be eligible to enroll land in the Environmental Quality Incentives Program or the Conservation Stewardship Program, as specified in parts 1466 and 1470 of this chapter, provided that their offer to enroll otherwise meets all program conditions, and provided that the CRP contract has expired and the beginning, veteran, or socially disadvantaged farmer or rancher is either leasing or has possession of the property.

(e) As an incentive for selling or leasing land to a beginning, veteran, or socially disadvantaged farmer or rancher who is not a family member of the previous participants, CCC will pay 2 years of additional CRP annual rental payments at the same contract rate to the previous participants. The previous participants must certify in writing that the beginning, veteran, or socially disadvantaged farmer or rancher is not a family member.

(f) The previous participants and the eligible beginning, veteran, or socially disadvantaged farmer or rancher must agree to be jointly and severally responsible for complying with both the provisions of the Transition Incentives Program contract and the provisions of this part, and must also agree to be jointly and severally responsible for any payment adjustments that may result from violations of the terms or conditions of the Transition Incentives Program contract or this part.

§ 1410.70 Soil Health and Income Protection Pilot Program.

(a) Enrollments under the Soil Heath and Income Protection Pilot Program will be administered under the provisions of this part, except where specifically provided otherwise.

(b) Notwithstanding § 1410.6(b) and (c), to be eligible under the Soil Health and Income Protection Pilot Program, land must be cropland that:

(1) Is physically located within a Soil Health and Income Protection Pilot Program pilot area specified by CCC;

(2) Has been annually planted or considered planted to an agricultural commodity each of the 3 crop years immediately preceding the year in which the offer for enrollment is submitted; and

(3) Is verified to be less productive land, as compared to other land on the farm from which the land is offered for enrollment.

(c) Notwithstanding paragraph (b) of this section, land will be ineligible for enrollment under the Soil Health and Income Protection Pilot Program if the land was enrolled in CRP in any of the 3 crop years immediately preceding the year in which the offer for enrollment is submitted. Further, not more than 15 percent of the eligible land on a farm may be enrolled in the Soil Health and Income Protection Pilot Program.

(d) Notwithstanding § 1410.30, offers for contracts under the Soil Health and Income Protection Pilot Program may be submitted only during signup periods as announced by CCC. Further, eligible land may only be enrolled under the Soil Health and Income Protection Pilot Program through December 31, 2020. Acreage determined eligible in accordance with paragraph (b) of this section may be automatically accepted in CRP without further evaluation if:

(1) A producer is eligible under § 1410.5; and

(2) The producer accepts either the maximum payment rate CCC is willing to pay to enroll the acreage in CRP, or a lesser rate.

(e) The approved cover for land enrolled under the Soil Health and Income Protection Pilot Program is the lowest practicable cost permanent vegetative cover.

(f) Notwithstanding §1410.40, CCC will not provide any cost-share payments for planting the approved permanent vegetative cover, except as provided for in paragraph (g) of this section.

(g) Notwithstanding paragraph (f) of this section and §1410.41, CCC will provide cost-share payments of 50 percent of the eligible actual cost of installation of the approved permanent vegetative cover to beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers, upon a determination that the approved permanent vegetative cover has been planted.

(h) The contract period for land enrolled under the Soil Health and Income Protection Pilot Program will be for a term of 3, 4, or 5 years, as requested by the producer.

(i) The following uses are permitted on land enrolled under the Soil Health and Income Protection Pilot Program:

(1) Without any reduction in the annual rental payment, the land may be:

(i) Made available for a walk-in access program of the applicable State; and

(ii) Hayed or grazed outside the primary nesting season, provided adequate stubble height of the cover is maintained to protect the soil as specified in the conservation plan; and

(2) In exchange for a 25 percent reduction to the annual rental payment, and not being eligible to be insured or reinsured under the Federal Crop Insurance Act, the land may be harvested for seed outside the primary nesting season if included in the conservation plan.

(j) A CRP contract for land enrolled under the Soil Health and Income Protection Pilot Program may be terminated before the end of the CRP contract period by either:

(1) CCC, if CCC determines that such termination is appropriate; or

(2) The participant, upon the condition that all CCC payments made with respect to the CRP contract being terminated are refunded.

§1410.80 CLEAR 30 Pilot Program.

(a) Not withstanding §1410.6(b) and (c), to be eligible under the CLEAR 30 Pilot Program, land must be:

(1) Physically located within a CLEAR 30 Pilot Program area, as announced by CCC;

(2) Devoted to a grass waterway, contour grass strip, prairie strip, filter strip, riparian buffer, wetland restoration practice, or other similar water quality practice that helps reduce sediment loadings, nutrient loadings, and harmful algal blooms; and

(3) Enrolled in CRP, in the final year of the CRP contract period, provided the scheduled expiration date of the current CRP contract is:

(i) On or after December 20, 2018; and

(ii) Before the effective starting date of the new CRP contract.

(b) The contract period for land enrolled under the CLEAR 30 Pilot Program will be 30 years.

(c) In addition to the provisions in §1410.32 and elsewhere in this part, the CRP contract for land enrolled under the CLEAR 30 Pilot Program will:

(1) Permit repairs, improvements, and inspections on the land that are necessary to maintain existing public drainage systems; and

(2) Prohibit:

(i) Alteration of wildlife habitat and other natural features of the land, unless authorized by CCC and provided for in the conservation plan;

(ii) Mowing or spraying chemicals on the land, unless such action is authorized by CCC to:

(A) Comply with Federal or State noxious weed laws;

(B) Comply with a Federal or State emergency pest management program; or

(C) Meet habitat needs of specific wildlife; and

(iii) Adoption of any other practice or action that would tend to defeat the purpose of CRP.

(d) Land enrolled under the CLEAR 30 Pilot Program may be used for compatible economic uses, including but not limited to hunting and fishing, managed timber harvest, or periodic haying or grazing, provided the use is:

(1) Included in the conservation plan; and

(2) Consistent with the long-term protection and enhancement of the conservation resource for which the land was enrolled.

(e) Notwithstanding §1410.30, offers for contracts under the CLEAR 30 Pilot Program may be submitted only during a time period, as determined and announced by CCC, and only within the final year of the contract period of the CRP contract under which the land is currently enrolled.

(f) In addition to the provisions in §1410.52, upon a violation of the terms and conditions of a contract for land enrolled under the CLEAR 30 Pilot Program, CCC may require the participant to refund all or part of any payments received under CRP plus interest and liquidated damages.

§ 1410.90 Conservation Reserve Enhancement Program.

(a) An agreement executed under the provisions of this section will not effect, modify, or otherwise interfere with any Conservation Reserve Enhancement Program agreement in effect on or before December 20, 2018. In order to implement other provisions of this section, the signatories to a Conservation Reserve Enhancement Program agreement in effect on or before December 20, 2018, may mutually agree in writing to modify such agreement in such a manner.

(b) CCC may enter into a Conservation Reserve Enhancement Program agreement with an eligible partner to cost-effectively assist in enrolling otherwise eligible land in CRP.

(c) To enter into a Conservation Reserve Enhancement Program agreement with CCC, eligible partners must provide required matching funds. Such matching funds provided by the eligible partners may be cash, in-kind contributions, or technical assistance. The amount and type of matching funds must be specified in the Conservation Reserve Enhancement Program agreement. The amount of matching funds an eligible partner must contribute under a Conservation Reserve Enhancement Program agreement will be either:

(1) 30 percent of the total cost of the project, unless a different amount is determined by negotiation between CCC and the eligible partner with whom CCC is entering into the Conservation Reserve Enhancement Program agreement, if the majority of the matching funds to carry out the agreement are provided by one or more eligible partners that are not nongovernmental organizations; or

(2) Not less than 30 percent of the total cost of the project, if a majority of the matching funds to carry out the agreement are provided by one or more nongovernmental organizations.

(d) Notwithstanding §1410.40(d), cost-share payments, including practice incentive payments, from all sources may exceed 100 percent of the actual cost of establishing eligible practices, but only if specifically authorized by the Conservation Reserve Enhancement Program agreement. Furthermore, a participant may not receive or retain cost-share payments if other Federal cost-share assistance is provided for such acreage under any law.

(e) With regard only to land enrolled as a riparian buffer:

(1) The term ''management'' means an activity conducted by the owner or operator of the land after the riparian buffer is established to regularly maintain or enhance only the vegetative cover throughout the CRP contract period and in accordance with the conservation plan;

(2) Cost-share payments will be made available for approved management as provided for in the Conservation Reserve Enhancement Program agreement:

(i) If such activity has been completed in accordance with the conservation plan; and

(ii) In an amount as provided for in the agreement, but not greater than 100 percent of the normal and customary cost of such activity; but

(iii) No practice incentive payment will be made for such activity; and

(3) If provided for in the Conservation Reserve Enhancement Program agreement, a participant may plant food-producing woody plants as part of the approved cover, provided such plantings:

(i) Contribute to the conservation of soil, water quality, and wildlife habitat;

(ii) Are consistent with recommendations of the applicable State Technical Committee;

(iii) Are consistent with the FOTG; and

(iv) Are provided for in the conservation plan.

(f) Participants may harvest from the food-producing woody plants specified in paragraph (e)(3) of this section only if the following conditions are met:

(1) The criteria in paragraph (e)(3) of this section are met;

(2) The participant agrees to a reduction in the annual rental payment commensurate with the value of the crop harvested;

(3) All the food-producing woody plant species within 35 feet of the water body the riparian buffer is buffering are only native plant species;

(4) The harvesting will not damage the approved cover or otherwise have a negative impact on the resource concern being addressed by the riparian buffer; and

(5) The harvesting is conducted in accordance with the conservation plan.

(g) In the case of a Conservation Reserve Enhancement Program agreement whose purpose is to address regional drought concerns, CCC may:

(1) Enroll otherwise ineligible cropland, marginal pastureland, or grassland, on which the resource concerns identified in the Conservation Reserve Enhancement Program agreement can be addressed if the enrollment of such land is critical to the accomplishment of the purposes of the agreement; and

(2) Determine annual rental payments so as to be consistent with similar Conservation Reserve Enhancement Program agreements, and to ensure regional consistency regarding such payments.

(h) Notwithstanding §1410.30, generally, enrollment under a Conservation Reserve Enhancement Program will be held on a continuous signup basis. However, the terms and conditions of the Conservation Reserve Enhancement Program agreement will determine the basis of enrollment.

[84 FR 66819, Dec. 6, 2019, as amended at 86 FR 70705, Dec. 13, 2021]

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

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AUTHORITY: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

SOURCE: 79 FR 46339, Aug. 8, 2014, unless otherwise noted.

Subpart A—General Provisions

§ 1412.1 Applicability, changes in law, interest, application, and contract provisions.

(a) This part specifies how base acres and farm program payment yields are established or adjusted for the purpose of calculating payments for agriculture risk coverage (ARC) and price loss coverage (PLC) for covered commodities: Wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing); corn; grain sorghum; long grain rice; medium grain rice; seed cotton; pulse crops; soybeans; other oilseeds; and peanuts. This part specifies how and when producers on a farm may make an election and enroll on a farm to obtain either ARC or PLC (and if ARC, whether to receive ARC payments based on county coverage applicable on a covered commodity-by-commodity basis; or individual coverage applicable to all the covered commodities on a farm).

(b) Payments otherwise provided for in this part are subject to changes made by law in rates, conditions, and eligibility notwithstanding any contract under this part. However, any such modification may, as determined by FSA, allow producers the opportunity to withdraw their ARC or PLC contract.

(c) If any refund is due to FSA under this part, interest will be due from the date of the FSA disbursement except as determined by FSA. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant is required to comply with the regulations in this part and any additional requirements imposed by the ARC or PLC contract.

(d) For ARC and PLC, assistance under this part will be provided for producers satisfying all requirements of this part who have a share of eligible base acres of the covered commodity. The sum of the base acres on a farm are based on the farm's constitution according to part 718 of this title. FSA farm records and PLC yields are based on the administrative county of the farm. ARC–CO assistance under this part will be determined by FSA for the enrolled covered commodity base acres based on the physical location of covered commodity base acres on a farm weighted and summarized to the farm.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40656, Aug. 16, 2018; 84 FR 45887, Sept. 3, 2019]

§ 1412.2 Administration.

(a) ARC and PLC are administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee

has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the Executive Vice President, or the Deputy Administrator, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify any non-statutory deadline specified in this part.

(f) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, yields, and payment factors established for ARC or PLC, are not subject to appeal in accordance with part 780 of this title.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40656, Aug. 16, 2018]

§ 1412.3 Definitions.

The definitions in this section are applicable for all purposes of administering this part. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions specified in this section. Where there is a conflict or a difference in definitions specified in this part and part 718 of this title or part 1400 of this chapter, the regulations in this part will apply.

2014 Farm Bill means the Agricultural Act of 2014 (Pub. L. 113–79), as amended.

Actual average county yield means the yield, which is calculated as the crop year production of a covered commodity in the county divided by the commodity's total planted acres for a crop year in the county.

(1) For wheat, corn, grain sorghum, barley and oats, planted acres are the harvested acres plus unharvested acres.

(2) In determining the yield for a county, FSA uses data in order from the following data sources: RMA and yields determined by State committee.

(3) Separate irrigated and non-irrigated yields will be established in a county having farms with P&CP acreage history of a covered commodity in 2013 through 2017. These separate yields will be established where FSA determines the covered commodity's P&CP acreage was both irrigated and non-irrigated in 2013 through 2017.

(4) At FSA's discretion, FSA will calculate and use a trend-adjusted yield factor to adjust the yield taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under the crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Actual crop revenue is calculated as follows for:

(1) ARC–CO, for a crop year of a covered commodity: The actual average county yield per planted acre of the covered commodity times the higher of either the market year average (MYA) price of the covered commodity or the national average loan rate for the covered commodity. If a county has separate irrigated and non-irrigated yields established for a covered commodity, the actual crop revenue calculated for a farm with that covered commodity will be weighted by FSA based on the farm's historical irrigated percentage.

(2) ARC–IC, for a producer on a farm for a crop year, which is based on the producer's enrolled share of planted acres of all covered commodities on all farms for which ARC–IC has been elected and in which the producer has an interest for which the producer enrolled: the sum of the results of the following calculation for each covered commodity on the farm:

(i) The total production of the covered commodity for all enrolled farms in the State in which the producer has an interest; times

(ii) The higher of either the MYA price or national loan rate for the covered commodity; divided by

(iii) The producer's share of the planted acres of the covered commodity in the State.

Administrative units means, for the purposes of ARC–CO, the division of specific counties into two areas for counties that are each larger than 1,400 square miles and have more than 190,000 base acres where appropriate based on the differences in weather patterns, soil types, and other factors.

Agriculture risk coverage (or ARC) means coverage provided under subparts D and E of this part.

ARC–CO means the Agriculture Risk Coverage elected with the county option.

ARC guarantee is calculated for a crop year for a covered commodity, and is equal to 86 percent of the benchmark revenue for ARC–CO and ARC–IC, as defined in this part.

ARC–IC means the Agriculture Risk Coverage elected with the individual option.

ARC–IC farm is calculated as the sum of the producer's interests in all of the producer's farms having an ARC–IC election and enrollment in the State.

Average historical county yield means the 5-year Olympic determined by FSA as the average of actual average county yields for the most recent 5 years for which data is available, substituting 80 percent of the county transitional yield as defined in this part in each year in which the actual average county yield is less than 80 percent of the county transitional yield. Separate irrigated and non-irrigated yields will be established in a county having a sufficient number of farms with P&CP acreage history of a covered commodity in 2013 through 2017. These separate yields will be established for counties where a covered commodity's P&CP acreage was both irrigated and non-irrigated in 2013 through 2017. If needed, a trend-adjusted yield factor will be used to adjust the yield taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under the crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501–1520).

Base acres means, with respect to a covered commodity on a farm, the number of acres in effect on September 30, 2013, as defined in the regulations in 7 CFR part 1412, subpart B that were in effect on that date, subject to any reallocation, adjustment, or reduction. The term ''base acres'' includes any unassigned base acres.

Benchmark revenue for ARC–CO is calculated as the product obtained by multiplying the average historical county yield times the average MYA price for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest prices and substituting the effective reference price in each year where the MYA price is less than the effective reference price. If a county has separate irrigated and non-irrigated yields established for a covered commodity, the benchmark revenue calculated by FSA for that farm and covered commodity will be weighted based on the farm's historical irrigated percentage.

Benchmark revenue for ARC–IC means a producer's share of all covered commodities planted on all farms in the State for which individual ARC has been elected and enrolled and in which the producer has an interest. FSA will calculate the benchmark revenue for ARC–IC using the following three steps, based on the producer's planted commodities:

(1) For each planted covered commodity for each of the most recent 5 crop years available:

(i) Yield per planted acre (substituting 80 percent of the county transitional yield in each year where the yield per planted acre is less than 80 percent of the county transitional yield); times

(ii) The MYA price for the most recent 5 crop years, excluding each of the crop years with the highest and lowest prices and substituting the effective reference price in each year where the MYA price is less than the effective reference price.

(2) For each covered commodity, the average of the revenues determined under paragraph (1) of this definition for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest revenues; and

(3) For each of the 2019 through 2023 crop years, the benchmark revenue for the ARC–IC farm is the sum of the

amounts determined under paragraph (2) of this definition for all covered commodities on such farms, adjusted to reflect the ratio between the total number of P&CP acres and eligible subsequently planted crop acreage on such farms to a covered commodity and the total P&CP acres and eligible subsequently planted crop acreage of all covered commodities planted on such farms. If a producer has an interest in multiple farms that have enrolled in ARC–IC, the ARC–IC benchmark revenue for that producer will be a weighted average of the benchmark revenue for those multiple farms.

Considered planted means acreage approved as prevented planted in accordance with part 718 of this title.

Contract means the CCC-approved forms and appendixes that constitute the agreement for participation of producers and covered commodities in ARC or PLC Program, as applicable.

Contract period means the compliance period specified for the contract for the particular program year, as designated on the contract or application. References to the ''contract'' period refer to the compliance period for the particular program year. The compliance period for each program year is October 1 through September 30. For example, for the 2019 contract (and therefore for the 2019 program), the period that begins on October 1, 2018 and ends on September 30, 2019.

Contract year or program year means the particular year of the particular contract based on the compliance period for the contract or application. The compliance year will run from October 1 to the following September 30 and will have the same name as the corresponding fiscal year. For example, the 2019 contract or program year will be October 1, 2018, through September 30, 2019, and that year will also be considered the 2019 crop year. The same references will apply to all other years.

Counter-cyclical payment yield means the farm's covered commodity yield as specified in the regulations for 7 CFR part 1412 that were in effect as of September 30, 2013.

County coverage means agriculture risk coverage (ARC–CO) elected under subpart D of this part with the county option.

Covered commodity means wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing), corn, grain sorghum, long grain rice, medium grain rice, seed cotton, pulse crops, soybeans, other oilseeds, and peanuts.

Covered commodity base acres means base acres of any covered commodity. The term does not include unassigned base acres on the farm.

Crop year means the relevant contract or application year. For example, the 2019 crop year is the year that runs from October 1, 2018, through September 30, 2019, and references to payments for that year refer to payments made under contracts or applications with the compliance year that runs during those dates.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Developed means:

(1) Land has been approved by the local government for uses other than commercial agricultural uses; and

(2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

Direct payment yield for upland cotton means the farm's upland cotton yield established as specified in the regulations for 7 CFR part 1412 that were in effect as of September 30, 2013.

Double-cropping means for covered commodities, notwithstanding the meaning in subparts D and E of this part for fruits and vegetables, the planting of a covered commodity for harvest in a crop year, in cycle with another covered commodity on the same acres for harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful, and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by FSA (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping of the covered commodities, as determined by

FSA, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of this part. Notwithstanding any of the provisions of 7 CFR part 718, in those instances where the subsequently planted or approved prevented planted covered commodity cannot be recognized as double-cropped acreage under this definition, the subsequently planted crop acreage will not be considered planted or prevented planted.

Dry peas means Austrian, wrinkled seed, yellow, Umatilla, and green peas, excluding peas grown for the fresh, canning, or frozen market.

Effective price is, the higher of the—

(1) National average market price received by producers during the 12-month marketing year for the covered commodity (also known as the MYA price), as determined by FSA; or

(2) National average loan rate as defined in this part for the covered commodity in effect for the crop year, which is the same as the loan rate for a marketing assistance loan for the commodity for that crop year.

Effective reference price means the lesser of the following:

(1) An amount equal to 115 percent of the reference price for a covered commodity; or

(2) An amount equal to the greater of:

(i) The reference price for a covered commodity; or

(ii) 85 percent of the average of the MYA price of the covered commodity for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest MYA price.

Extra long staple cotton means cotton that is other than upland cotton and both the following:

(1) Produced from pure strain varieties of the Barbadense species or any hybrid of the species, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which United States upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary as suitable for the production of the varieties or types; and

(2) Ginned on a roller-type gin or, if authorized by the Secretary, ginned on another type of gin for experimental purposes.

Fallow means any cropland or DCP cropland that is not devoted to any crop or trees.

Farm structure means the constitution of the farm. References to ''farm structure'' can be by date or crop year. When references to farm structure are by crop year, that means the farm as was last constituted as specified in 7 CFR part 718 subpart C in that crop year.

Fiscal year means the year running from October 1 to the following September 30 and will be designated by the same calendar year in which it ends. For example, the 2019 fiscal year begins on October 1, 2018 and ends on September 30, 2019.

Generic base acres means the number of base acres for upland cotton in effect on September 30, 2013, as defined in the regulations in 7 CFR part 1412, subpart B that were in effect on that date, subject to any adjustment or reduction under this part. Generic base acres are subject to allocation according to §1412.25.

Grass or pasture means any cropland or DCP cropland devoted to grass, native grass, mixed forage two or more interseeded grass mix, and mixed forage native grass interseeded.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in or on a truck or other conveyance or is consumed by livestock through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay, are considered harvested when in the bale, whether removed from the field or not.

Historical irrigated percentage means the percentage of the covered commodity on a farm that was irrigated (P&CP, including subsequently planted crop acreage) divided by the total acreage of the covered commodity (P&CP, including subsequently planted crop acreage) between the years 2013 through 2017, or, at FSA's discretion,

such other similar 5 year-period (such as 2015 through 2019).

Idle means any cropland or DCP cropland that is not devoted to any crop or trees.

Individual coverage means ARC (ARC–IC) elected under subpart D of this part with the individual option.

Initial crop means acreage of a covered commodity planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

Marketing year means the 12-month period beginning in the calendar year the crop is normally harvested as follows:

(1) Barley, oats, and wheat: June 1 through May 31;

(2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1 through June 30;

(3) Peanuts, seed cotton, and rice: August 1 through July 31; and

(4) Corn, grain sorghum, soybeans, sunflowers, safflower, mustard, crambe, sesame, and chickpeas: September 1 through August 31.

Market year average (MYA) price means the national average price received by producers during the 12-month marketing year (as defined in this part), as determined by FSA for the relevant crop of the covered commodity.

Medium grain rice means medium grain rice and includes short grain rice and temperate japonica rice.

Most recent 5 crop years available means the 5 years preceding the most immediately preceding crop year. For example, for the 2019 crop year, the most recent 5 years available are 2013 through 2017.

NASS means the National Agricultural Statistics Service.

National average loan rate means the loan rate established for a crop year of the covered commodity as specified in 7 CFR part 1421.

Other oilseed means a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or any oilseed designated by the Secretary.

Owner means the person or legal entity meeting the definition of owner in part 718 of this title for the applicable contract period for which that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of an ''owner'' is required under this part, the person or legal entity must be an owner for the applicable contract period for which the person or legal entity is signing the form or performing the action required under this part.

Payment acres means:

(1) For the purpose of ARC–CO and PLC, subject to planting flexibility provisions as specified §1412.46, the payment acres for each covered commodity on a farm will be equal to 85 percent of the covered commodity's base acres on the farm.

(2) For the purpose of ARC–IC, subject to planting flexibility provisions as specified in §1412.46, the payment acres for a farm will be equal to 65 percent of all the covered commodity base acres on the farm.

Payment yield means for a farm for a covered commodity, the yield established under subpart C of this part.

Price Loss Coverage (or PLC) means coverage provided under subpart D of this part.

Producer means the person or legal entity meeting the definition of producer in 7 CFR part 718 for the applicable contract period for which that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of a ''producer'' is required under this part, the person or legal entity must be a producer during the applicable contract period for which that person or legal entity is signing the form or performing the action required under this part.

Pulse crop means dry peas, lentils, small chickpeas, and large chickpeas.

Reference price means, with respect to a covered commodity for a crop year, the following for:

(1) Wheat, $5.50 per bushel;

(2) Corn, $3.70 per bushel;

(3) Grain sorghum, $3.95 per bushel;

(4) Barley, $4.95 per bushel;

(5) Oats, $2.40 per bushel;

(6) Long grain rice, $14.00 per hundredweight;

(7) Medium grain rice, $14.00 per hundredweight;

(8) Soybeans, $8.40 per bushel;

(9) Other oilseeds, $20.15 per hundredweight;

(10) Peanuts, $535.00 per ton;

(11) Dry peas, $11.00 per hundredweight;

(12) Lentils, $19.97 per hundredweight;

(13) Small chickpeas, $19.04 per hundredweight;

(14) Large chickpeas, $21.54 per hundredweight; and

(15) Seed cotton, $0.367 per pound.

Replacement crop means the planting or approved prevented planting of any crop for harvest following the failure of planted crop acreage or prevented planted acreage of a covered commodity not in a recognized double-cropping sequence (as specified in this section). Replacement crops cannot generate payments under this part unless the replacement crop acreage meets the definition of eligible subsequently planted crop acreage as specified in this section; and

Reseeded or replanted crop means the second planting of a covered commodity on the same acreage after the first planting of that same crop has failed.

RMA means the Risk Management Agency.

Seed cotton means unginned upland cotton that includes both lint and seed.

Subsequently planted crop acreage means planted acres of a covered commodity following an initial P&CP covered commodity. Subsequently planted crop acreage can be used for base reallocation for ARC and PLC under subpart B.

Supportive and necessary contractual documents mean those documents including, but not limited to, those items substantiating the ARC or PLC contract such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by FSA.

Temperate japonica rice means rice that is grown in high altitudes or temperate regions of high latitudes with cooler climate conditions, in the Western United States, as determined by FSA, for the purpose of the—

(1) Reallocation of base acres under subpart B of this part;

(2) Establishment of a reference price equal to the medium grain rice reference price multiplied by the ratio obtained by dividing:

(i) The simple average of the marketing year average price of medium grain rice from the 2012 through 2016 crop years, by

(ii) The simple average of the marketing year average price of all rice from the 2012 through 2016 crop years; and

(3) Determination of the actual crop revenue and ARC guarantee under subparts D and E of this part.

Transitional yield means the yield determined according to section 502(b) of the Federal Crop Insurance Act (7 U.S.C. 1502(b)).

Trend-adjusted yield means the yield computed by multiplying the benchmark yield by a factor determined by taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) for that crop and county.

Unassigned base acres means the number of acres derived from generic base acres where no ARC or PLC payments are generated or earned.

Upland cotton means cotton that is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. In other words, it means any cotton that is not extra long staple cotton.

[79 FR 46339, Aug. 8, 2014, as amended at 79 FR 57714, Sept. 26, 2014; 79 FR 74571, Dec. 15, 2014; 83 FR 40657, Aug. 16, 2018; 84 FR 45888, Sept. 3, 2019; 85 FR 16232, Mar. 23, 2020]

§ 1412.4 Appeals.

A participant may seek reconsideration and review of any individual program eligibility adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

§ 1412.23 Base acres, and Conservation Reserve Program.

(a) Subject to paragraphs (b) and (c) of this section, FSA will annually adjust the base acres for covered commodities with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program (CRP) contract that expired, was voluntarily terminated, or was early released.

(b) The total base acres on a farm cannot exceed the limitation specified in § 1412.24.

(c) Adjustments to (not reallocation of) base acres on a farm in accordance with this section are to be completed by no later than August 1 or other date as determined and announced by the CRP contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the producer of the farm may elect to receive ARC or PLC payments, in accordance with any ARC and PLC election made under section 1115 of the 2014 Farm Bill with respect to the base acres added to the farm under this section, or a prorated payment under the CRP contract, but not both. For any farm that had all of its base acres reduced for participation in CRP, if the farm had no base acres or election in effect before an adjustment is made to put base acres of a covered commodity back on the farm, the owners of that farm will have an opportunity to reallocate base acres and the producers will have an opportunity to elect ARC or PLC within 30 days of being notified of the establishment of base acres on that farm before producers enroll base acres on that farm.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40657, Aug. 16, 2018; 84 FR 45889, Sept. 3, 2019]

§ 1412.24 Limitation of total base acres on a farm.

(a) The sum of the following cannot exceed the total cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this part; plus

(2) Any cropland acreage on the farm enrolled in a CRP contract in accordance with part 1410 of this chapter; plus

(3) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter; plus

(4) Any other acreage on the farm enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the base acres against which any reduction required in this section will be made. Absent the owner selecting the base acres for reduction, FSA will apply a pro-rata reduction against the base acres before computing and issuing any payments for the program year when a reduction becomes necessary.

(c) In applying paragraph (a) of this section, FSA will take into account the practice of double cropping on a farm, as determined by FSA.

(d) For base acre reductions:

(1) Subject to the limitation in paragraph (d)(2) of this section, a permanent reduction of all or a portion of a farm's base acres will be allowed when all owners of the farm execute and submit a written request for such reduction, on a CCC-approved standard, uniform form designated by CCC, to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm's base acres to negate or reduce a program violation is not allowed.

(e) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acres on the farm will be reduced accordingly regardless of the submission of a request for such reduction.

(f) The base acres on a farm will be proportionately reduced when it is determined that the land has been subdivided and developed for multiple residential units or other nonfarming uses if, in the judgment of the county committee, the size of the tracts and the

density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless either of the following applies:

(1) The producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use and such land has not been divided from the farm with a farm reconstitution performed according to part 718 of this title; or

(2) A properly constituted or reconstituted farm contains sufficient land that has not yet been subdivided and developed for multiple residential units or other nonfarming uses, and the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40657, Aug. 16, 2018; 84 FR 45889, Sept. 3, 2019]

§ 1412.25 Allocation of generic base acres on a farm and updating of records.

(a) Any or all of the owner(s) of a farm with generic base acres adjusted as of February 9, 2018, will have a one-time opportunity in an allocation period as announced by FSA, if a covered commodity including upland cotton was planted or prevented from being planted during the 2009 through 2016 crop years, to:

(1) Allocate the farm's generic base acres to seed cotton base acres in a quantity equal to the greater of:

(i) 80 percent of the generic base acres on the farm; or

(ii) The average number of upland cotton acres planted and prevented from being planted on the farm during the 2009 through 2012 crop years, not to exceed the total generic base acres on the farm; or

(2) Allocate base acres for covered commodities, including seed cotton, by applying paragraph (e) of this section.

(b) Under no circumstances will the allocation of generic base acres on a farm as specified in paragraph (a) of this section result in any increase in total base acres on a farm. Additionally, if any owner submits a written statement that conflicts with the allocation request or expresses written disagreement with the allocation filed according to paragraph (a) of this section, no allocation will be approved for the farm unless all the owners of the farm provide FSA with written evidence of the dispute resolution during the allocation period.

(c) FSA will provide the farm operator and owners of record with a summary of all covered commodities P&CP acres and subsequently planted crop acreage for the 2008 through 2012 crop years (as reported to FSA on acreage reports filed with FSA in each of those years). Acreage not reported to FSA by producers will not be included in the summary. The summary of records specified in paragraph (c) of this section is intended to assist owners of farms with the one-time opportunity for generic base acre allocation as provided in this section. Any owner of a farm may also at any time visit the FSA county office and request to obtain a copy of the summary referenced in this paragraph (c).

(d) Owners will be provided a one-time opportunity to update the records identified in paragraph (c) of this section during the allocation period, provided that there are crop insurance records (or other verifiable documentation available to support those requested updates). In the event that an update to a farm's P&CP acres of a covered commodity for 2009 through 2012 causes any payment under another FSA or CCC program to become unearned, the overpayment must be refunded to FSA or CCC in accordance with the rules for that program and the FSA or CCC regulations governing overpayment (part 718 of this title and part 1403 of this chapter).

(e) After an update as specified in paragraph (d) of this section, the owner may allocate the farm's generic base acres during the allocation period based on a proration of each covered commodity's P&CP acres or subsequently planted crop acreage in crop years 2009 through 2012 to the total P&CP acres or subsequently planted crop acreage of all covered commodities during that time.

(f) Owners can allocate generic base acres at any time during the allocation period without receiving or requesting

the summary records, and, therefore, failure to receive a summary record from FSA is not grounds for appeal or extension of the allocation period.

(g) The option to allocate generic base acres is an ''all or nothing'' decision for the farm. Generic base acres will not be retained, partially or in whole. A decision by any owner to allocate generic base acres on a farm in accordance with this section is final and binding if made according to this section during the allocation period unless that allocation is withdrawn in writing by that owner or another owner. If another owner subsequently files a different allocation request in whatever time remains in the stated allocation period or if there are conflicting allocation requests of owners in the allocation period, FSA will not make the allocation unless the conflict is resolved via written agreement between the owners who filed the conflicting requests. In the event that a resolution is not presented, the provisions of paragraph (h) of this section will take effect. In the case of submitting evidence of resolution, the written agreement must be filed with FSA during the allocation period. Any and all updates and allocation requests mentioned in this section are subject to review and approval or disapproval by FSA for CCC.

(h) In the event that an owner fails to make an allocation according to this part and the farm has met the planting requirement in paragraph (a) of this section, the farm will receive an allocation of seed cotton base acres in accordance with paragraph (a)(1)(i) of this section.

[83 FR 40657, Aug. 16, 2018, as amended at 84 FR 45889, Sept. 3, 2019]

§ 1412.26 Treatment of base acres on farms entirely in pasture, grass, idle, or fallow.

(a) A farm on which all of the cropland was planted to grass or pasture, including cropland that was idle or fallow from January 1, 2009, through December 31, 2017, will have base acres and yields maintained for the covered commodities on the farm, except that no payment will be made with respect to those base acres under this part for the 2019 through 2023 crop years.

(b) The producers on a farm for which all of the base acres are maintained under paragraph (a) of this section are:

(1) Ineligible to change the election applicable to the producers on the farm under subpart G of this part; and

(2) Not permitted to reconstitute the farm to void or change the treatment of base acres under paragraph (a) of this section.

[84 FR 45890, Sept. 3, 2019]

Subpart C—Establishment of Price Loss Coverage Yields and Submitting Production

SOURCE: 79 FR 57716, Sept. 26, 2014, unless otherwise noted.

§ 1412.31 PLC yields for covered commodities.

(a) Except for seed cotton PLC yield for covered commodities on the farm is equal to the counter-cyclical payment yield established for each covered commodity on the farm that was effective September 30, 2013, unless the PLC yield is updated as specified in § 1421.32. If the Secretary designates an additional oilseed or pulse crop as a covered commodity that does not have a counter-cyclical payment yield, the PLC yield for that commodity will be established as specified in § 1412.34.

(b) The PLC yield for seed cotton on the farm is equal to the counter-cyclical payment yield established for upland cotton on the farm as in effect September 30, 2013, times 2.4, unless the PLC yield is updated as specified in § 1421.33.

(c) If a PLC yield is not already established for a covered commodity on a farm for which base acres are allocated through the base acres reallocation process a yield will be established for the covered commodity on the farm using the yield on similarly situated farms, as determined by FSA. The yield on similarly situated farms will then be used as the 2013 county average counter-cyclical yield for the covered commodity.

[79 FR 57716, Sept. 26, 2014, as amended at 83 FR 40658, Aug. 16, 2018]

§ 1412.32 Updating PLC yield for all covered commodities except seed cotton.

(a) For any covered commodity on the farm that has base acres as adjusted, in excess of zero acres, an owner of the farm has a one-time opportunity in a specified period, as announced by FSA, to update PLC yields on a covered commodity-by-covered commodity basis equal to 90 percent of each covered commodity's 2013 through 2017 average yield per planted acre, excluding from the average any year when no acreage was planted to the covered commodity. If the yield per planted acre in any of the years 2013 through 2017 is less than 75 percent of the average of the county yield, then 75 percent of the average of the 2013 through 2017 county yield will be substituted for that year, excluding from the average any year when no acreage was planted to the covered commodity, multiplied by the ratio obtained by dividing:

(1) The average of the 2008 through 2012 national average yield per planted acre for the covered commodity; by

(2) The average of the 2013 through 2017 national average yield per planted acre for the covered commodity.

(b) The owner of the farm may retain the counter-cyclical yield as the PLC yield or update the PLC yield, on a covered commodity-by-covered commodity basis.

(c) PLC yields are exclusively used for PLC. However, any owner of a farm can update the PLC yields, regardless of program election or decision on enrollment or participation.

(d) A decision by any owner of a farm to update any PLC yield as specified in this section is final and binding unless that decision to update the yield is withdrawn by that owner or a different yield update is made by that owner or another owner. If that owner or another owner requests a different PLC yield update for the covered commodity during the yield update period specified in paragraph (a) of this section that update will become final.

(e) All PLC yield updates are subject to review and approval by FSA as specified in § 1412.36. FSA's decision to issue payments based on the PLC yield updated by an owner is subject to verification and spot check by FSA at any time.

(f) Yield updates in this section will be permitted using the owner's certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the owner must submit evidence specified in § 1412.34 to support the certified yield.

[79 FR 57716, Sept. 26, 2014, as amended at 83 FR 40658, Aug. 16, 2018; 84 FR 45890, Sept. 3, 2019]

§ 1412.33 Updating PLC yield for seed cotton.

(a) For a farm that has seed cotton base acres as adjusted, in excess of zero acres, an owner of the farm has a one-time opportunity in a specified period, as announced by FSA, to update the PLC yield equal to 90 percent of the seed cotton's 2013 through 2017 average yield per planted acre, excluding from the average any year that no acreage was planted to upland cotton, times 2.4. If the yield per planted acre in any of the years 2013 through 2017 is less than 75 percent of the average of the county yield, then 75 percent of the average of the 2013 through 2017 county yields will be substituted for that year, excluding from the average any year when no acreage was planted to the covered commodity, multiplied by the ratio obtained by dividing:

(1) The average of the 2008 through 2012 national average yield per planted acre for the covered commodity; by

(2) The average of the 2013 through 2017 national average yield per planted acre for the covered commodity.

(b) The owner of the farm may retain the PLC yield or update the PLC yield.

(c) PLC yields are exclusively used for PLC. However, any owner of a farm can update the seed cotton PLC yield as specified in paragraph (a) of this section, regardless of program election, enrollment, or participation.

(d) A decision by any owner of a farm to update the seed cotton PLC yield as specified in this section is final and binding unless that decision to update the yield is withdrawn by that owner or a different yield update is made by that owner or another owner. If that owner or another owner requests a different PLC yield update for the covered

commodity during the yield update period specified in paragraph (a) of this section, that update will become final.

(e) All PLC yield updates are subject to review and approval by FSA as specified in §1412.36. FSA's decision to issue payments based on the PLC yield updated by an owner is subject to verification and spot check by FSA at any time.

(f) Yield updates in this section will be permitted using the owner's certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the owner must submit evidence specified in §1412.35 to support the certified yield.

[83 FR 40658, Aug. 16, 2018, as amended at 84 FR 45890, Sept. 3, 2019]

§1412.34 PLC yield for additional oilseeds.

(a) The PLC yield for the farm for additional oilseeds designated by the Secretary will be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop, as determined by FSA, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by FSA.

(b)(1) The yield per planted acre for such designated oilseed on the farm is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years will be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year will be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with §1412.35; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section will be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator will assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

(c) The establishment of PLC yield for an additional oilseed in this section will be permitted using a producer certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the producer must submit evidence as specified in in §1412.35 to support the certified yield.

[79 FR 57716, Sept. 26, 2014. Redesignated and amended at 83 FR 40658, Aug. 16, 2018]

§1412.35 Submitting production evidence.

(a) When required by FSA as specified in this part, documentary evidence supporting any certification of yield or production must be provided to the county committee of the county where the farm is administratively located.

(b) Documentary evidence acceptable to FSA includes, but is not limited to:

(1) Production approved by the county committee for some other FSA program purpose;

(2) Commercial receipts;

(3) Settlement sheets;
(4) Warehouse ledger sheets;
(5) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;
(6) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance; or
(7) Other production evidence determined acceptable by the Deputy Administrator.
(c) Production evidence specified in paragraph (b) of this section must show:
(1) The producer's name,
(2) The commodity,
(3) The buyer or name of storage facility,
(4) The date of transaction or delivery, and
(5) The quantity.
(d) FSA may verify the production evidence submitted with records on file at the warehouse, Risk Management Agency, or other entity that received or may have received the reported production.

[79 FR 57716, Sept. 26, 2014. Redesignated at 83 FR 40658, Aug. 16, 2018]

§ 1412.36 Incorrect or false production evidence.

(a) If a certification of production and yield or production evidence submitted in support of that certification is false or incorrect, as determined by the county committee, the county committee will determine whether the owner, operator, or producer submitting the certification or production evidence for a farm acted in good faith or took action to defeat the purpose of ARC or PLC.
(b) If the county committee determines the owner or producer who submitted the certification or production evidence referenced in paragraph (a) of this section acted in good faith and did not take action to defeat the purpose of ARC or PLC, the county committee will, as applicable:
(1) Correct the PLC yield for the applicable covered commodity to equal the yield that would have been calculated as specified in § 1412.32 based on accurate production evidence; and
(2) Recalculate any payments based on the correct yield and require refunds of any payments that were issued as a result of the incorrect yield. Unearned payments must be refunded together with interest from the date of disbursement and are due from any producers who received payments that would not have issued absent the error or incorrect yield.
(c) If the county committee determines the owner, operator, or producer who submitted the false or incorrect evidence did not act in good faith or took any action to defeat or undermine the purpose of ARC or PLC, the county committee will require a full refund of any payments, with interest, that were issued to any persons based on that false or erroneous certification or production evidence and the yield update request is invalid.

[79 FR 57716, Sept. 26, 2014. Redesignated at 83 FR 40658, Aug. 16, 2018]

Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

§ 1412.41 ARC or PLC program contract.

(a) The following provisions apply to ARC and PLC Program contracts:
(1) Eligible producers (as specified in § 1412.42) of covered commodities with base acres may enroll in ARC and PLC contracts during the enrollment period announced by FSA.
(i) The 2019 contract period ends September 30, 2019. Accordingly, the enrollment for 2019 is the only program year a retroactive contract can be approved. (ii) Except as stated in this section, enrollment is not allowed after September 30 of the fiscal year in which the ARC or PLC payments are requested. FSA will not process offers of enrollment for a contract period after the contract period has ended. This is not a compliance provision but a rule of general applicability and will apply to every offer to contract in each contract year.
(iii) If a 2019 farm did not have a valid election made by producers in accordance with subpart G of this part, no producer on that farm is eligible for any 2019 ARC or PLC payment for that farm. This is not an adverse decision

for any enrolled producer on that farm; rather, the farm's producers are simply not eligible for payments on the enrolled farm because the farm's producers failed to make a valid election in 2019.

(2) Except as specified in this section for ARC–CO and PLC enrollments, contracts will not be approved unless all producers sharing in contract acreage with more than a zero share have submitted all applicable signatures on the contract and documentation necessary for FSA to approve the contract.

(i) For ARC–IC contracts there are no exceptions to this provision for signatures and documentation.

(ii) A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the enrollment deadline is incomplete and will not be considered by FSA or CCC for any purpose and will not be acted on or approved.

(iii) Contracts enrolled by a producer by the date specified in paragraph (a)(1) of this section that were not signed by other producers as required by this section will be withdrawn and will not be approved.

(iv) An exception to this signature and documentation provision applies to ARC–CO and PLC offers of enrollment. In those instances in which, at the discretion of the Deputy Administrator and where no dispute of shares or other disagreement between producers is evident or suspected, ARC–CO and PLC offers of enrollment can be approved for the covered commodity to permit payment to only those eligible producers who did enroll and without regard to shares that do not have signatures. In this exception, the covered commodity on the farm will be considered enrolled. This exception will be made only if, in the sole judgment and discretion of FSA, FSA is satisfied that those producers who did sign in accordance with this section ensure compliance with all contract provisions and requirements of this part.

(v) Producers have no right to payment on any farm that is not enrolled in ARC or PLC and they are not entitled to a decision to authorize the exception in paragraph (a)(2)(iv) for ARC–CO and PLC enrollments, as that is discretionary. CCC and FSA are not responsible for ensuring that producers annually enroll in ARC or PLC.

(3) An eligible producer's valid share of enrolled base acres on a farm is always limited to the producer's share of reported crop acreage on the farm. For example, if a producer enrolled with a 75 percent share of a farm's 1,000 base acres, the producer's enrollment would only be valid if the producer had 100 percent share interest in 750 or more reported crop acres on that farm. Valid claimed shares of base acres must always be supported by reported crop acres on the farm.

(4) Except for enrollments of ARC–IC, eligible producers who choose to enter into a contract with FSA do so on a covered commodity-by-covered commodity basis. If the decision is made to enroll a covered commodity on a farm, producers having not less than 100 percent of the interest in those covered commodity base acres must enroll all covered commodity base acres of the covered commodity on the farm. Enrollment of fewer than all base acres of the covered commodity by all the producers having a share interest in that covered commodity on the farm is not allowed and such covered commodity will not be considered enrolled unless all producers who share in the base acres complete enrollment by the end of the enrollment period. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(5) Producers who have enrolled according to this section must submit all required documents necessary to determine payment eligibility as specified in §§ 1412.51 and 1412.67.

(b) Any eligible producer of an enrolled covered commodity or ARC–IC contract may withdraw from a contract at any time by the end of the contract period. The withdrawal must be filed in writing and submitted to CCC and FSA by the end of the contract period. If any producer of a covered commodity or ARC–IC contract submits a written request to withdraw, FSA will consider the enrollment of that covered commodity or ARC–IC contract withdrawn.

(c) If the multiyear annual contract option is selected by all of a farm's producers of covered commodity base

acres on the farm, the enrollment of any covered commodity on the farm in a year will be presumed by CCC and FSA to be the enrollment for following subsequent crop years unless any of the following, occur:

(1) A change to the farm's constitution;

(2) A change to any of the farm's base acres or PLC yield of any covered commodity;

(3) A change to any of the producers or producer shares of covered commodities on the farm;

(4) A change in either election or enrollment of any covered commodity on the farm; or

(5) Any change, including a withdrawal of any enrolled producer, that FSA determines to require producers on the farm to reaffirm enrollment.

(d) All contracts expire on September 30 of the fiscal year of the contract unless:

(1) Withdrawn in accordance with paragraph (b) of this section;

(2) Terminated in accordance with paragraph (e) or (f) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(e) A transfer or change in the interest of an owner or producer in the farm or in acreage on the farm subject to a contract will result in the termination of the contract. The contract termination will be effective on the date of the transfer or change. Successors to the interest in the farm or crops on the farm subject to the contract may enroll the covered commodities on the farm in a new contract for the current year and assume all obligations under the contract.

(f) In the event a 2019 or subsequent crop year farm reconstitution is completed on a properly enrolled farm or farms in accordance with part 718 of this title, FSA will issue notices to the farm operator and owners of record on a farm that all producers with an interest in the base acres on the farm must sign a new ARC or PLC program contract within the later of 30 days of the notice or September 30 of the fiscal year program payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. It is the responsibility of the operator and owners on a farm that producers with an interest in base acres are notified of the reconstitution and requirement for a new contract.

[84 FR 45890, Sept. 3, 2019]

§ 1412.42 Eligible producers.

(a) Producers eligible to enter into a contract are:

(1) An owner of a farm who has an ownership share of a crop and who assumes all or a part of the risk of producing a crop that is commensurate with that claimed ownership share of the crop; or

(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract; or

(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner is not required to enter into the contract; or

(4) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring before September 30 of the year of the contract. The owner of such farm must also enter into the same contract, failing which the farm is not enrolled; or

(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, payments will not begin under the contract until the lease held by the tenant ends.

(b) A minor child will be eligible to enter into a contract only if one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or law;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(c) The owner of the farm may be considered the ''producer'' if there is

no other producer, but the owner could have shared in the crop had a crop been produced, but only if the farm and owner otherwise meet all the requirements for payment.

[79 FR 57717, Sept. 26, 2014]

§ 1412.43 Reconstitutions.

Farms will only be reconstituted in accordance with subpart G of this part and part 718 of this title.

[79 FR 57717, Sept. 26, 2014]

§§ 1412.44–1412.45 [Reserved]

§ 1412.46 Planting flexibility.

(a) Any crop may be planted and harvested on base acres on a farm, except as limited in this section. Any crop may be planted on cropland in excess of the base acres on a farm.

(b) Base acres may be hayed or grazed at any time.

(c) Except as specified in paragraph (e) of this section, the planting or harvesting of perennial or harvesting of non-perennial fruits, vegetables (except mung beans and covered commodities), or wild rice, as determined by FSA, will result in an acre for acre payment reduction when such crop or crops are planted and or harvested, as applicable, on more than:

(1) 15 percent of the base acres of a farm enrolled in ARC or PLC using county coverage; or

(2) 35 percent of the base acres of a farm enrolled in ARC using individual coverage.

(d) For each crop year for which a reduction in payment acres is made according to paragraph (c) of this section, those acres will be considered to be P&CP to a covered commodity for the purpose of any adjustment or reduction of base acres for the farm.

(e) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables, and wild rice may be planted or harvested on base acres of a farm and non-perennial fruits, vegetables, and wild rice may be harvested on base acres of a farm if a producer double-crops fruits, vegetables, or wild rice with a covered commodity in any region described in paragraph (f) of this section, in which case payment acres will not be reduced for the planting or harvesting of the fruit, vegetable, or wild rice.

(f) Double-cropping for purposes of this section means planting for harvest non-perennial fruits, vegetables, or wild rice on the same acres in cycle with a planted covered commodity harvested for grain in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

(1) *Alabama*. Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

(2) *Alaska*. None.

(3) *Arizona*. Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

(4) *Arkansas*. Ashley, Benton, Clay, Craighead, Crawford, Crittenden, Cross, Faulkner, Franklin, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Logan, Lonoke, Mississippi, Monroe, Phillips, Pulaski, St. Francis, Sebastian, Washington, Woodruff, and Yell.

(5) *California*. Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

(6) *Caribbean Office*. None.

(7) *Colorado*. Otero.

(8) *Connecticut*. None.

(9) *Delaware*. All counties.

(10) *Florida*. All counties except Monroe.

(11) *Georgia*. All counties.

(12) *Hawaii*. None.

(13) *Idaho*. None.

(14) *Illinois*. Adams, Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Edwards, Effingham, Franklin, Gallatin, Hamilton, Iroquois, Jefferson,

Jersey, Johnson, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Peoria, Randolph, Sangamon, St. Clair, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, White, Woodford, and Whiteside.

(15) *Indiana*. Allen, Bartholemew, Daviess, Gibson, Jackson, Johnson, Knox, LaGrange, LaPorte, Madison, Marion, Martin, Miami, Pike, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.

(16) *Iowa*. Kossuth, Mitchell, Palo Alto, and Winnebago.

(17) *Kansas*. None.

(18) *Kentucky*. All counties.

(19) *Louisiana*. Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

(20) *Maine*. None.

(21) *Maryland*. Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

(22) *Massachusetts*. None.

(23) *Michigan*. St. Joseph and Kalamazoo.

(24) *Minnesota*. Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Stearns, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.

(25) *Mississippi*. All counties.

(26) *Missouri*. Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Perry, Ripley, Scott, and Stoddard.

(27) *Montana*. None.

(28) *Nebraska*. Box Butte, Dawes-North Sioux, Morrill, and Sheridan.

(29) *Nevada*. None.

(30) *New Hampshire*. None.

(31) *New Jersey*. Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

(32) *New Mexico*. Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

(33) *New York*. Cayuga, Columbia, Dutchess, Erie, Genesee, Greene, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Putnam, Rensselaer, Saratoga, Schoharie, Seneca, Steuben, Suffolk, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates.

(34) *North Carolina*. Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Martin, McDowell, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Vance, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

(35) *North Dakota*. None.

(36) *Ohio*. Carroll, Champaign, Clermont, Fulton, Henry, Jackson, Lucas, Miami, Morgan, Muskingum, Scioto, Stark, Tuscarawas, Wood, and Vinton.

(37) *Oklahoma*. Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

(38) *Oregon*. Clackamas, Marion, Morrow, Multnomah, Polk, Umatilla, and Yamhill.

(39) *Pennsylvania*. Adams, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Erie, Franklin, Indiana, Lancaster, Lehigh,

Montgomery, Monroe, Montour, Northampton, Northumberland, Schuylkill, Snyder, Union, and York.

(40) *Puerto Rico*. None.

(41) *Rhode Island*. None.

(42) *South Carolina*. All counties.

(43) *South Dakota*. None.

(44) *Tennessee*. Benton, Bledsoe, Cannon, Chester, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Henry, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Marion, Maury, McNairy, Obion, Overton, Pickett, Putnam, Rhea, Robertson, Rutherford, Sequatchie, Shelby, Sumner, Tipton, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

(45) *Texas*. Anderson, Andrews, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bexar, Borden, Bosque, Bowie, Brazos, Brazoria, Briscoe, Brooks, Brown, Burleson, Caldwell, Callahan, Cass, Cameron, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fischer, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Gillespie, Glasscock, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hansford, Hardeman, Hardin, Harris, Hartley, Haskell, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones Karnes, Kent, Kinney, Kleberg, Knox, Lamar, Lamb, LaSalle, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Rains, Randall, Red River, Refugio, Reeves, Robertson, Runnels, San Saba, San Patricio, Scurry, Sherman, Smith, Somervell, Starr, Stonewall, Swisher, Tarrant, Taylor, Terry, Tom Green, Upton, Uvalde, Van Zandt, Victoria, Walker, Washington, Webb, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wise, Wilson, Wood, Wise, Wood, Yoakum, Young, Zapata, and Zavala.

(46) *Utah*. None.

(47) *Vermont*. None.

(48) *Virginia*. Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

(49) *Washington*. Yakima.

(50) *West Virginia*. Monroe.

(51) *Wisconsin*. Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth, Washington, Waukesha, Waushara, and Winnebago.

(52) *Wyoming*. None.

(g) The acreage of any fruit or vegetable specified in paragraph (i) of this section will first be attributed to cropland not having base acres, followed by base acres, before applying any payment acreage reduction required by paragraph (c) of this section. The reduction will be attributed to each of the covered commodities on the farm having payment acres on a pro rata basis to reflect the ratio of the payment acres of the covered commodity on the farm to the total payment acres of all covered commodities on the farm.

(h) For the purposes of this part, fruits, vegetables, and wild rice planted on payment acres of a farm under ARC or PLC Program contract:

(1) Will be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, as specified in part 718 of this title, to verify that the fruit, vegetable, or wild rice has been destroyed before harvest, as determined by FSA; or

(2) Will not be considered as planted to a fruit, vegetable, or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by FSA, and a fee to cover the cost of a farm visit is paid by the producer, as specified in part 718 of this title, to verify that the crop has not been harvested.

(i) Unless otherwise specifically included as a covered commodity as specified in this part, fruits and vegetables include, but are not limited to, all nuts except peanuts, certain fruit-bearing trees and: Acerola (barbados cherry), antidesma, apples, apricots, aragula, ariona (chokeberry), artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolocavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries, elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radicchio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

[79 FR 46339, Aug. 8, 2014, as amended at 79 FR 57718, Sept. 26, 2014; 83 FR 40659, Aug. 16, 2018; 84 FR 45891, Sept. 3, 2019; 84 FR 53579, Oct. 8, 2019]

§ 1412.49 Matters of general applicability.

(a) The regulations in this part and FSA and CCC's interpretation of the regulations in this part and internal agency directives issued to FSA State and county offices are matters of general applicability and are not individually appealable in administrative appeals according to §§ 11.3 and 780.5 of this title. Additionally, the regulations in this part and any decisions of CCC and FSA that are not based on specific facts derived from an individual participant's application, contract, or file are not appealable under part 11 or part 780 of this title. Examples of such decisions include how the program is generally administered, signup deadlines, payment rates, or any other generally applicable matter or determination that is made by CCC or FSA for use in all similarly situated applications. The only extent by which the matters referenced in this section are reviewable administratively in an appeal forum is

whether FSA's or CCC's decision to apply the generally applicable matter is factually accurate and in conformance with the regulations in this part.

(b) The relief provisions of 7 CFR part 718 are applicable only to ineligibility and noncompliance decisions. The relief provisions cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of this part. Equitable relief provisions of part 718 of this title cannot be used to obtain a review of either these regulations, the requirements of this part, the agency's interpretations of this part, or compliance provisions of this part.

[79 FR 46339, Aug. 8, 2014, as amended at 84 FR 45893, Sept. 3, 2019]

§ 1412.50 Transfer of land and succession-in-interest.

(a) Land subject to an election in subpart G will continue to be subject to the election even if there is a transfer of land or change in interest of any producer or owners on the farm. If a new owner or operator or producer purchases or obtains the right and interest in, or right to occupancy of, the land subject to an election option, such new owner or operator or producer, upon the approval of FSA, may enroll and participate under a new contract with FSA with respect to such transferred land in accordance with § 1412.41.

(b) A succession in interest to an ARC or PLC program contract is required if there has been a change in the operation of a farm such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in the producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) Another change as otherwise determined by the Deputy Administrator by which the succession will not adversely affect nor defeat the purpose of the program.

(c) A succession in interest to an ARC program contract is not permitted if FSA determines that the change:

(1) Is not for all the time remaining under the ARC or PLC program contract;

(2) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(3) Adversely affects or otherwise defeats the purpose of the program.

(d) If a producer who is entitled to receive ARC or PLC payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(e) A producer or owner of an enrolled farm must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(f) In any case in which either an ARC or PLC payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

[79 FR 57718, Sept. 26, 2014]

Subpart E—Financial Considerations Including Sharing Payments

§ 1412.51 Limitation of payments.

(a) The provisions of part 1400 of this chapter apply to this part. Payments under this part cannot exceed the amounts specified in part 1400 of this chapter.

(b) For all covered commodities other than peanuts, the total amount of ARC and PLC payments received, directly or indirectly, by a person or legal entity (except a joint venture or general partnership) for any crop year for any and all commodities cannot exceed $125,000.

(c) For peanuts, the total amount of payments received, directly or indirectly, by a person or legal entity (except a joint venture or general partnership) for any crop year cannot exceed $125,000.

(d) Notwithstanding any other provision of this part, a producer on a farm is not eligible to receive ARC and PLC payments if the sum of the base acres on the farm is 10 acres or less unless the sum of the base acres on the farm, when combined with the base acres of other farms in which the producer has an enrolled producer share interest greater than zero, is more than 10 acres. The 10-acre limitation of this section will not apply to a socially disadvantaged farmer or rancher, a beginning farmer or rancher, a veteran farmer or rancher, or a limited resource farmer or rancher.

(e) Any person or legal entity interested in obtaining a payment under this part for a crop year, in addition to satisfying all eligibility requirements of this part, must submit any and all documents from which payment eligibility can be determined to FSA by March 1 of the second year after the end of the annual contract period for which payments are being made. For example, to obtain a payment for a 2019 contract, which ends in calendar year 2020, all documents must be submitted to FSA by March 1, 2021. This includes any payment eligibility document required under part 12 or part 1400 of this title. For example, for the 2019 contract year, the final date for submission of documents from which payment eligibility will be determined and apply is March 1, 2021. Payments will not issue to any person or legal entity who fails to submit required forms and documents by this date. Further these payments will not be considered denied, as the person or legal entity is presumed to have forfeited their interest in the payment.

[79 FR 46339, Aug. 8, 2014, as amended at 79 FR 57719, Sept. 26, 2014; 83 FR 40659, Aug. 16, 2018; 84 FR 45893, Sept. 3, 2019]

§ 1412.52 PLC payment provisions.

(a) Provided all provisions of this part including but not limited to election have been satisfied for a contract year, a PLC payment will be made to eligible participants on a farm enrolled in PLC with respect to covered commodities for which a PLC yield and base acres are established:

(1) When the effective price for a covered commodity in a crop year is less than the effective reference price for the PLC enrolled covered commodity for that crop year as specified in this part; and

(2) As soon as practical, as determined by the Deputy Administrator, after October 1 following the end of the 12-month marketing year for the covered commodity as applicable.

(b) The effective price for a covered commodity is equal to the higher of the:

(1) MYA price received by producers during the 12-month marketing year for the crop year of the covered commodity, as determined by FSA, or

(2) National loan rate for a marketing assistance loan for the covered commodity for such crop year.

(c) The payment rate used to calculate PLC payments with respect to covered commodity for which PLC yields and base acres are attributed to the covered commodity on a farm enrolled in a PLC contract is the effective reference price of the covered commodity minus the effective price of the covered commodity for a crop year, as determined in accordance with paragraph (b) of this section.

(d) For PLC contracts, when PLC payments are triggered in accordance with paragraph (a) of this section, subject to the limitation in § 1412.51 and in part 1400 of this chapter, the PLC payment to be paid to producers on a farm enrolled in a contract with respect to a covered commodity for which a PLC yield and base acres are attributed is equal to the product of:

(1) The payment rate determined in accordance with paragraph (c) of this section, multiplied by

(2) The relevant payment acres of the covered commodity, as applicable, minus any payment acre reduction in accordance with § 1412.46, multiplied by

(3) The PLC payment yield for the covered commodity on the farm enrolled in a PLC contract as determined in accordance with § 1412.31, minus

(4) Any reduction calculated in accordance with subpart F of this part.

(e) If a producer declines to accept, has forfeited interest in the payment as specified under §1412.51, or is determined to be ineligible for all or any part of the producer's share of the PLC payment computed for the farm in accordance with the provisions of this section, the:

(1) Payment or portions thereof will not become available for any other producer and

(2) Producer is required to refund to CCC any amounts representing payments that exceed the payments determined by FSA to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(f) The payment of any amount due any producer on a farm enrolled in a PLC contract will be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part or any other applicable part.

(g) A participant on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other participants on the farm if the:

(1) Participant is in full compliance with the contract and the requirements in this part or any other applicable part;

(2) Payment of such amount does not adversely affect or defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

(3) Payment is approved by the Deputy Administrator, or designee.

(h) Temperate japonica rice or medium and short grain rice grown:

(1) In California will receive the effective price and guarantee for medium and short grain based only on the prices that temperate japonica or medium and short grain rice receives in California.

(2) Outside of California will receive the effective price and guarantee for medium and short grain rice based only on the prices that temperate japonica or medium and short grain rice receives outside of California.

[79 FR 57719, Sept. 26, 2014, as amended at 83 FR 40659, Aug. 16, 2018; 84 FR 45893, Sept. 3, 2019]

§1412.53 ARC payment provisions.

(a) Effective with the 2019 and subsequent crop years, ARC–CO actual crop revenue and guarantee will be based on the physical location of base acres of the farm.

(1) FSA will divide up to 25 counties into administrative units. Each of the resulting administrative unit will be viewed as a county for ARC–CO payment purposes.

(2) If a farm has base acres physically located in more than one physical location county, the ARC–CO actual revenue and ARC–CO guarantee will be weighted and summarized to the farm level.

(3) If determined applicable by FSA, a historical irrigated percentage and trend-adjusted yield factor will be used to determine guarantee and revenue, which will also be weighted and summarized to the farm level.

(b) Provided all provisions of this part, including but not limited to ARC–CO election and enrollment, have been satisfied for the contract year, CCC will issue, as applicable and consistent with the election and enrollment:

(1) An ARC–CO payment beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity to the producers on a farm for a covered commodity in each crop year if the farm and covered commodity were enrolled in ARC–CO and the farm's weighted and summarized ARC–CO actual crop revenue was less than the farm's weighted and summarized ARC–CO guarantee.

(2) Payment is equal to the result of multiplying the payment acres for the covered commodity times the difference between the farm's weighted and summarized actual crop revenue and the ARC–CO guarantee, not to exceed 10 percent of the farm's weighted and summarized ARC–CO benchmark revenue.

(c) In a county having farms with P&CP acreage history of a covered commodity in 2013 through 2017, where a covered commodity's P&CP acreage was both irrigated and non-irrigated in 2013 through 2017, a separate irrigated and non-irrigated benchmark revenue, guarantee, and actual revenue will be maintained by FSA for the affected

county. For farms in those counties with covered commodities enrolled in ARC–CO, the average 2013 through 2017 reported acreage of each covered commodity on the farm with irrigated and non-irrigated status will be used by FSA to calculate a percentage of each applicable covered commodity that will be applied against the irrigated and non-irrigated benchmark revenue, guarantee, and actual revenue.

(d) FSA has determined the irrigated and non-irrigated counties and crops for the 2019 program year.

(e) Provided all provisions of this part, including but not limited to ARC–IC election and enrollment, have been satisfied for the contract year, CCC will issue, as applicable and consistent with the election and enrollment:

(1) An ARC–IC payment beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the farm if the farm was enrolled in ARC–IC and the ARC–IC actual crop revenue for that farm is less than the ARC–IC guarantee.

(2) Payment is equal to the result of multiplying the payment acres for the covered commodities times the difference between actual crop revenue and the ARC–IC guarantee, not to exceed 10 percent of benchmark revenue for ARC–IC.

(f) If a producer has an interest in multiple farms that have enrolled in ARC–IC, the ARC–IC benchmark revenue for that producer used in the payment calculation will be a weighted average of the benchmark revenue for those multiple farms.

(g) The effective price and guarantee for temperate japonica rice will be based on the price that all medium and short grain (including glutinous) rice receives in California. The effective price and guarantee for medium grain rice outside California will be based on the price that all medium and short grain rice receives outside California.

[84 FR 45893, Sept. 3, 2019]

§ 1412.54 Sharing of payments.

(a) Each eligible producer on a farm may enroll in an ARC or PLC contract, as applicable, and receive assistance and payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(b) When required by FSA, each person or legal entity leasing a farm who enrolls in ARC or PLC must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

(1) If a farm is cash leased (that is, the landowner receives a zero share of covered commodities planted on the farm or a zero share of any base acres) and the producers on the farm cash leased the farm in the immediately preceding year, then the tenant(s) who enters a producer signature and has a share greater than zero on the contract, if the same was true for the immediately preceding year, is considered to have satisfied ARC and PLC Program requirements of landowner(s) signing to a zero share on the contract The evidence must have been submitted for the immediately preceding contract year or was referred to in that contract year to an immediately preceding contract year.

(2) When required by FSA, an owner's or landlord's signature affirming a zero share on either an application for assistance or contract under this part, as applicable, may be accepted as evidence of a cash lease between the owner or landlord and tenant.

(3) For the purposes of obtaining payments under this part, the signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, are required to be provided by the enrollment deadline established by CCC for the assistance or payment.

(c) When land on which base acres is leased on a share basis, neither the landlord nor the tenant is eligible to receive 100 percent of the ARC or PLC contract payment for the farm.

(d) CCC will approve an ARC or PLC contract for enrollment and approve the division of payment when CCC is satisfied and determines that all of the following apply:

(1) The landlords, tenants, and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) The interests of tenants and sharecroppers are being protected; and

(3) The payment shares shown on the application or contract do not circumvent either the provisions of this part or the provisions of part 1400 of this chapter.

(4) If any civil dispute between persons, legal entities, or members of legal entities not involving FSA or CCC is known or suspected to exist that either FSA or CCC believes might impact the eligibility of any person or legal entity or administration of ARC or PLC under this part, the Deputy Administrator can elect to withhold making any determination on an application or contract until such time as the Deputy Administrator is satisfied that the dispute is resolved or no longer has any bearing on either the administration of ARC or PLC under this part or any eligible producer or potential eligible producer. A decision withheld under to this paragraph will not be construed to be a decision or adverse decision under any law or regulation nor will it be construed to be a failure of FSA or CCC to act under any law or regulation.

(e) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount, or a fixed quantity of the crop (for example, pounds, or bushels per acre).

(1) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, the agreement will be considered to be a share lease.

(2) If a lease provides for a guaranteed amount and a share of the crop or crop proceeds, the agreement will be considered a cash lease.

(3) If the lease is a cash lease, the landlord is not eligible for assistance or payments under this part. The leasing of grazing or haying privileges is not considered cash leasing.

(f) Shares of PLC and ARC–CO will be determined based on the shares entered on the contract. Shares of ARC–IC payments will be determined based on the shares recorded on the report of acreage filed as specified in §1412.66. Further, each eligible producer having a share of planted or eligible subsequently planted crop acreage of covered commodities on a farm enrolled under an ARC or PLC Program contract has to do both of the following to be eligible for their share of a payment:

(1) Unless otherwise already enrolled on the ARC or PLC Program contract, sign the ARC or PLC Program contract during the contract period; and

(2) Have the producer's share recorded on the report of acreage filed as required by part 718 of this title and §1412.66.

(g) In a case where a producer has failed to sign an ARC or PLC Program contract by the signup deadline or contract period established for enrollment and participation for the producer's reported share of P&CP acres or eligible subsequently planted crop acreage of covered commodities on a farm enrolled as specified in this part, that producer's share will not receive any consideration for payment and will not generate any payment to the producer or to any other producer on the farm.

(h) FSA's approval of an ARC or PLC contract or shares under this part on behalf of CCC based on the representations of persons or legal entities signing the ARC or PLC contract, or acreage report in no way implies or will be construed as FSA's determination that the representations or assertions made by persons or legal entities signing the ARC or PLC contract, or acreage report are correct or are approved as legitimate. Any and all assertions and representations of a person, persons, legal entity, or legal entities signing forms, applications, or contracts incidental to program participation in this part are always subject to review and scrutiny or spot check by CCC. On CCC's behalf, FSA can at any time demand documentation to substantiate any representation made by any program participant under this part and recover unearned amounts that are determined to have been paid based on such erroneous representation.

[79 FR 46339, Aug. 8, 2014, as amended at 79 FR 57720, Sept. 26, 2014; 83 FR 40659, Aug. 16, 2018; 84 FR 45894, Sept. 3, 2019]

§ 1412.55 Provisions relating to tenants and sharecroppers.

(a) No payment or assistance authorized under this part will be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under ARC or PLC. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine are required to be refunded to CCC; or

(2) The landlord terminated a lease in violation of State law as determined by a State court.

(b) [Reserved]

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018]

Subpart F—Violations and Compliance Provisions

§ 1412.61 Contract violations.

Violations of contract or application requirements will result in the termination or cancellation of the ARC or PLC contract. Upon such termination or cancellation, all producers that signed the contract or application forfeit all rights to receive payments for the ARC or PLC contract and are required to refund all payments received, plus interest as specified in § 1412.1(d) of this part, as determined in accordance with part 1403 of this chapter.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018]

§ 1412.63 Contract or application liability.

All producers who signed an ARC or PLC Program contract made according to this part are jointly and severally liable for contract or application violations and resulting repayments and penalties.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018]

§ 1412.64 Inaccurate representation, misrepresentation, and scheme or device.

(a) Producers are required to accurately report and certify information provided to CCC for ARC or PLC. Any form containing the signature of a person or legal entity that contains a preprinted certification statement on the form will be construed to be a representation and certification of and from the person or legal entity signing the form regardless of whether or not the person or legal entity personally made the entry or entries on the form. Errors in reporting may impact eligibility or extent of eligibility. Payments under this part will be based on the most correct information available. CCC's issuing payments based on the face of a contract does not signify CCC's approval of the representations made by participants. Producers are responsible for refunding, with interest as specified in § 1412.1(d) of this part, any program benefits that were paid based on incorrect program information.

(b) For those cases in which FSA determines that an inaccurate representation or certification is due to a misrepresentation, scheme, or device, the person or legal entity or members of the legal entity will be ineligible to receive ARC or PLC payments and will have the person, legal entity's or member's interest in all contracts or applications terminated if it is determined that such person, legal entity, or member of the legal entity has done any of the following:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting an ARC or PLC Program contract or determination made under part 1400 of this chapter; or

(4) Violated or been determined ineligible under § 1400.5 of this chapter.

(c) Any remedies taken by FSA or CCC as specified in this section will be in addition to any other civil or other remedies that may be available, including, but not limited to, those provided in part 1400 of this chapter.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018]

§ 1412.65 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

§ 1412.66 Acreage and production reports, prevented planting, and notices of loss.

(a) An accurate report of all cropland acreage on the farm is required for ARC or PLC. How to submit the acreage report is specified in part 718 of this title.

(b) Prevented planting acreage credit will only be available to acreage that CCC determines was prevented from being planted due to an eligible cause of loss. Acreage ineligible for prevented planted credit includes acreage not planted due to a management decision. Prevented planting acreage credit is subject to the provisions of part 718 of this title.

(c) As a condition of producer payment eligibility for all ARC–IC payments under this part, all producers of all covered commodities on enrolled ARC–IC elected farms must accurately submit a report of production by the acreage reporting date for the crop in the year immediately following the crop year of the reported crop acreage for all the covered commodities elected and enrolled in ARC–IC. The report is due for each covered commodity for which an acreage report greater than zero planted acres was filed for the farm according to paragraph (a) of this section. The report of production for all of such covered commodity or covered commodities can be submitted by any of the producers of the covered commodity or covered commodities on the farm, the farm operator, or an owner on the farm. The absence of the required production report of any covered commodity being filed on an enrolled ARC–IC elected farm will cause all of the producers who share in any of the covered commodities on that farm to be ineligible for payment on that farm and on any other ARC–IC elected and enrolled farm in the State for the crop year for which the production report was not filed or is missing. At the discretion of CCC, the report of production must be accompanied by documentation acceptable to CCC. The report must include the date harvest was completed. Records of production acceptable to CCC may include those specified in:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries of the crop that was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the crop has been fed to livestock or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the crop acreage prior to harvest.

[79 FR 46339, Aug. 8, 2014, as amended at 79 FR 57720, Sept. 26, 2014; 83 FR 40659, Aug. 16, 2018]

§ 1412.67 Compliance with highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1412.68 Controlled substance violations.

The provisions of part 718 of this title apply to this part.

§ 1412.69 Control of noxious weeds.

Enrolled ARC and PLC contract participants agree to effectively control noxious weeds and otherwise maintain

the land on the farm in accordance with sound agricultural practices; and use the land on the farm for an agricultural or conserving use, and not for a nonagricultural commercial, industrial, or residential use.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018]

Subpart G—ARC and PLC Election

SOURCE: 79 FR 57720, Sept. 26, 2014, unless otherwise noted.

§ 1412.71 Election of ARC or PLC.

(a) For the 2019 though 2023 crop years, subject to paragraph (f) of this section, all of the producers on a farm must make a one-time election in the 2019 enrollment and election period that is both:

(1) Unanimous, and

(2) Irrevocable through 2020.

(b) The election by producers is to obtain—

(1) Either PLC or ARC–CO on a covered commodity-by-covered-commodity basis on the farm; or

(2) ARC–IC for all covered commodities on the farm.

(c) In general, a valid election will also apply to any subsequent year parent to the farm reconstitution as well as farms resulting from the parent farm as specified in § 1412.73. Neither the requesting of a farm reconstitution nor the reconstitution of any farm will impact either the requirement that all producers on a farm must make the unanimous irrevocable election in the defined election period or the valid election that was previously made by those producers.

(d) FSA will process elections from producers on a farm based on the election as submitted. For example, if the producers of a farm attest that they are all or the only producers on the farm and FSA later learns that there was another producer at the time of election who did not agree to the election, the election is invalid. If at any time FSA determines that an election fails to satisfy the requirements of this subpart because it did not include the unanimous agreement of all producers on the farm at the time of election, the election will immediately be invalid. This is not a compliance provision. Only valid elections by all producers will be recognized and used by CCC. All ARC and PLC payments that were issued to any producers on a farm based on an election later determined by CCC to be invalid, for whatever reason, regardless of whether those producers who were issued unearned payments personally made or participated in the invalid election, must be refunded with interest.

(e) Even if completed during the same period of time, election is separate from enrollment; producers on farms that have validly completed an election in the prescribed election period must enroll as specified in subpart D of this part for ARC and PLC payments, as applicable.

(f) Except for those farms specified under § 1412.26, for the 2021 and each subsequent crop year, all the producers on a farm may change the election under paragraph (a) of this section.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018; 84 FR 45894, Sept. 3, 2019]

§ 1412.72 Election period.

(a) Election will be conducted in a defined period as announced by FSA. During the election period, all producers on a farm must unanimously make the irrevocable election as described in § 1412.71 to preserve the payment eligibility for 2019 and determine whether the default election under § 1412.74 will apply to the farm.

(b) If an election is submitted by all producers on a farm as specified in § 1412.71 and paragraph (a) of this section, that election will be recognized as valid for the farm unless any of the following occur:

(1) The election is rescinded or terminated by any producer on the farm in accordance with paragraph (c) of this section during the election period;

(2) The valid election is modified and replaced by another valid election by all producers during the election period;

(3) A subsequent valid election by all producers is made with FSA during the election period; or

(4) FSA determines the election at the time it was made was invalid for any reason.

(c) At any time during an election period, a producer can rescind or terminate an election by providing written notice to FSA during the election period. The written notice to rescind or terminate must be physically received by FSA for CCC during the election period in order to be recognized. Immediately following receipt of such notice to rescind or terminate, the farm will be viewed as not having any effective valid election (in other words, no valid election will be determined to exist—even if there was another previous election in effect before the election that is rescinded, or terminated as specified in with this paragraph).

(d) FSA is under no obligation to notify producers or owners on a farm that an election has been submitted, filed, rescinded, or terminated. Producers of a farm are solely responsible for filing a valid election during an election period or in whatever time remains in an election period following the rescission or termination of an election.

(e) FSA is under no obligation to notify producers or owners of whether or not a valid election exists or is in place or whether any producer has rescinded or terminated an election. FSA will respond to inquiries regarding the status of election of a farm by any producer or owner on a farm including a producer or owner who gains a producer or owner interest on the farm during the election period.

(f) The election period and final day in that election period in which producers can unanimously and irrevocably elect are not a compliance requirement or provision. The requirement of an election is mandated in the 2014 Farm Bill, as amended and as such is not subject to any of the equitable relief provisions of 7 CFR part 718, subpart D. Further, because the requirement of a unanimous irrevocable election and ramifications for not having a valid election are specified in the 2014 Farm Bill, as amended FSA will not consider any equitable relief. There are no late-file provisions for election.

[79 FR 57720, Sept. 26, 2014, as amended at 84 FR 45894, Sept. 3, 2019]

§ 1412.73 Reconstitutions of farms and election.

(a) If a new producer or new owner gains an interest in a farm after the filing of a valid election on that farm during the election period, that new producer or new owner, whether or not known to FSA or the other producers or owners on the farm, will be subject to any previously submitted valid election under §§ 1412.71 and 1412.72 unless that new producer or new owner modifies, rescinds, or terminates the election as a producer or owner as specified in § 1412.72(c) during the remaining time in the election period.

(b) Any reconstitution request initiated after August 1, 2019, will not be made until after the end of the election period specified in § 1412.72. Following the close of the election period in § 1412.72, a valid election on any farm cannot be changed by any reconstitution. This means that valid elected farms can only be combined with farms having an identical election for each and every covered commodity on the farm regardless of whether there are any base acres for any and all covered commodities on the farm. Reconstitutions will not be permitted to alter a valid election or the default election that may apply to a farm.

[79 FR 57720, Sept. 26, 2014, as amended at 84 FR 45895, Sept. 3, 2019]

§ 1412.74 Failure to make election.

(a) If all producers on a farm do not make a unanimous election during the period specified in § 1412.72, that farm will not have a valid election and any producer on the farm is not eligible for 2019 ARC or PLC enrollment or payments.

(b) If a valid election is not made for a farm in the 2019 crop year, FSA will not make any payments with respect to the farm for the 2019 crop year and the producers on the farm will, subject to § 1412.71(f), default to the same coverage for each covered commodity on the farm for the 2020 through 2023 crop years as was applicable for the 2015 through 2018 crop years.

[79 FR 46339, Aug. 8, 2014, as amended at 83 FR 40659, Aug. 16, 2018; 84 FR 45895, Sept. 3, 2019]

Subpart H—CTAP

§ 1412.81 Administration.

(a) The provisions of this part apply to this subpart, except for provisions that apply specifically to ARC and PLC only, for example, the yield and planting flexibility provisions apply specifically to ARC and PLC. To the extent that there is a conflict with the provisions of other subparts of this part and this subpart, the provisions of this subpart apply to CTAP.

(b) CTAP payments as specified in this subpart will be made available for:

(1) The 2014 crop year to eligible producers on farms in all counties; and

(2) The 2015 crop year to eligible producers on farms only in counties where STAX is not available.

§ 1412.82 Eligibility and CTAP application.

(a) *Eligibility.* In addition to any general eligibility provisions in this part, to be eligible for CTAP the following conditions are required:

(1) The producer is a person or legal entity who is actively engaged in farming and otherwise eligible for payment, as specified in 7 CFR part 1400;

(2) The producer is on a farm that has cotton base acres that were in existence as of September 30, 2013, as adjusted; and

(3) The producer has an interest in the upland cotton base acres on the farm.

(b) *Producer's share interest.* A producer's share interest in cropland on a farm must be equal to or greater than that producer's share interest in cotton base acres on the farm for that crop year, as reported on that farm's acreage report.

(c) *Application.* To apply, submit the application and supportive and necessary contractual documents to the FSA county office:

(1) For 2014 CTAP by October 7, 2014; and

(2) For 2015 CTAP, by July 31, 2015.

§ 1412.83 Sharing of CTAP payments.

(a) Each eligible producer on a farm may apply for and receive CTAP payments determined to be fair and equitable as agreed to by all producers on the farm and as approved by the county committee.

(b) The provisions of § 1412.54 regarding the classification of leases apply to CTAP.

(c) Shares of CTAP payments will be determined based on shares recorded on the application for CTAP payments for the particular program year. The provisions of § 1412.54 apply to shares of CTAP payments.

§ 1412.84 Impact of CTAP application on ARC or PLC.

(a) Applications for CTAP do not establish eligibility for ARC or PLC. Interested producers are required to file documents that are specifically required for CTAP as specified on the CTAP application. An application for CTAP will not be considered an intent to participate in ARC or PLC and, conversely, an election or enrollment in ARC or PLC will not establish eligibility for CTAP.

(b) [Reserved]

§ 1412.86 CTAP payments.

(a) In the case of producers on a farm who apply for CTAP as specified in this part, and where all other eligibility provisions have been satisfied, CCC will make CTAP payments available to the producers on a farm's application as specified in this subpart.

(b) CTAP payments for upland cotton producers on farms with eligible upland cotton base acres as specified in § 1412.82(a) are equal to:

(1) For 2014, the product of multiplying 60 percent of the farm's upland cotton base acres, times the farm's direct payment yield for upland cotton, times $0.09, times the producer's share on the approved application; or

(2) Where applicable for 2015 according to this part and subpart, the product of multiplying 36.5 percent of the farm's upland cotton base acres, times the farm's direct payment yield for upland cotton, times $0.09, times the producer's share on the approved application.

§ 1412.87 Transfer of land and succession-in-interest.

(a) A succession in interest application for CTAP is required if there has been a change in the producer shares of

upland cotton base acres in §1412.82(a) for 2014 or 2015, as applicable, due to:

(1) A sale of land;

(2) A change of producer, including a change in a partnership that increases or decreases the number of partners or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the upland cotton base acres relevant to the originally approved application; or

(5) Any other change determined by the Deputy Administrator to be a succession that will not adversely affect or defeat the purpose of CTAP.

(b) A succession in interest to the CTAP application is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions specified in §1412.55; or

(2) Adversely affects or otherwise defeats the purpose of CTAP.

(c) If a producer who is entitled to receive CTAP payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner of an enrolled farm is required to inform the county committee of changes in interest in base acres of upland cotton as specified in §1412.82(b) on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title; or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e) In any case in which a CTAP payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor.

§1412.88 Executed application not in conformity with regulations.

If, after a CTAP application is approved by CCC, it is discovered that such any information contained in the application is not in conformity with the provisions of this part, the provisions of this part will prevail.

§1412.89 Division of CTAP payments and provisions relating to tenants and sharecroppers.

(a) CTAP payments will be divided in the manner specified in the applicable application approved by CCC. CCC will ensure that 2014 or 2015 producers who would have a 2014 or 2015 reported share interest in cropland on the farm specified in §1412.82(b) receive treatment that CCC deems to be equitable, as determined by CCC. CCC will refrain from acting on an application if, as determined by CCC, there is a disagreement among any person or legal entity applying as to the person's or legal entity's eligibility to apply as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have a reported share interest in the cropland on the farm sufficient to cover the claimed share interest in cotton base acres of that farm as specified in §1412.82(b) in 2014 or 2015, as applicable.

(b) CCC may remove an operator or tenant from an application under this subpart and part when the operator or tenant:

(1) Requests, in writing to be removed from the application;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the application, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the 2014 or 2015 program year and the Administrator of the estate fails to succeed to the application within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the application under this part and subpart of the operator or tenant and such order is received by FSA, as determined by CCC.

(c) In addition to the provisions in paragraph (b) of this section, tenants are required to maintain their tenancy throughout the crop year in order to remain on an application. Tenants who

fail to maintain tenancy on the acreage under the application, including failure to comply with provisions under applicable State law, may be removed from an application by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a participant specified in the application.

PART 1413—COMMODITY INCENTIVE PAYMENT PROGRAMS

Subpart A—Durum Wheat Quality Program

Sec.

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Subparts B–C [Reserved]

AUTHORITY: 7 U.S.C. 8788 and 15 U.S.C. 714.

SOURCE: 75 FR 41965, July 20, 2010, unless otherwise noted.

Subpart A—Durum Wheat Quality Program

§ 1413.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Durum Wheat Quality Program (DWQP) as authorized by section 1613 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) will be administered.

(b) This program will operate only to the extent appropriated funding is available.

(c) Subject to available funding, eligible producers of durum wheat will be partially compensated for the cost of purchasing and applying fungicides to a crop of durum wheat to control Fusarium head blight on acres accurately certified as planted to durum wheat. ''Available funding'' requires that there be a specific appropriation for the program that applies to a particular crop for which the producer seeks compensation under this program.

§ 1413.102 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application period means the dates established by the Deputy Administrator for Farm Programs for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

Crop year means the calendar year in which the wheat was harvested or intended to be harvested. For example, a reference to the 2010 crop year of wheat means wheat that when planted was intended for harvest in calendar year 2010.

Durum wheat means all varieties of white (amber) durum wheat as defined in the U.S. Standards for Wheat (7 CFR part 810, subpart M) including, but not limited to, hard amber durum wheat and amber durum wheat.

Flowering stage means the period of time during the wheat growth stage, after the head emergence has completed and prior to milk development in the kernel.

State committee, county committee or county office means the respective FSA committee or office.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

USDA means the United States Department of Agriculture.

§ 1413.103 Administration.

(a) DWQP will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Agency (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this

subpart, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the provisions of this subpart that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in compliance with the provisions of this subpart.

(2) Require a county FSA committee to not take an action that is not in compliance with the provisions of this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the Administrator, Deputy Administrator, or a designee from determining any question arising under the program in this subpart, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory program requirements of this subpart in cases where failure to meet such requirements does not adversely affect operation of the program in this subpart. Producers have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

§ 1413.104 Eligibility.

(a) To be considered eligible for DWQP payments, the person or entity must have a share in the treated wheat crop on those acres planted to durum wheat on which an eligible fungicide was applied, as certified on the application, have incurred the cost of acquiring and applying eligible fungicide, and meet the requirements in paragraph (b) of this section.

(b) To be eligible for benefits, a person or entity must be a:

(1) Citizen of the United States;

(2) ''Lawful alien'' as defined in §1400.3 of this chapter;

(3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

(c) A minor child is eligible to apply for DWQP payments if all the eligibility requirements of this subpart are met and the requirements in part 1400 of this chapter that apply to minor children are met.

(d) A person or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm.

(e) State and local governments and their political subdivisions and related agencies are not eligible for DWQP payments.

(f) To be considered an eligible fungicide under this subpart, the fungicide must be:

(1) Registered with the U.S. Environmental Protection Agency, as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), unless exempt from FIFRA requirements;

(2) In compliance with State pesticide regulations, if applicable, in the State in which benefits are being requested; and

(3) Applied specifically to control Fusarium head blight on acres certified as planted by the producer to durum wheat for the applicable crop year.

(g) CCC will provide program benefits to reimburse eligible costs for a maximum of one fungicide treatment, including application cost, during the flowering stage, to a crop of durum wheat per crop year. Multiple or additional fungicide treatments, beyond a single treatment, to the same crop of wheat are not eligible for benefits.

§ 1413.105 [Reserved]

§ 1413.106 Application process.

(a) To apply for DWQP payment, the producer must submit, to the FSA county office that maintains the producer's farm records for the agricultural operation, a completed application as specified in paragraph (c) of this section, including any supporting

documentation required by FSA, and a report of acreage.

(b) The producer must submit a completed application for payment and required supporting documentation to the administrative FSA county office during the relevant, for the crop, application period announced by FSA which will end no later than September 15 of the crop year in which the fungicide was applied to a crop of durum wheat.

(c) A complete application includes all of the following:

(1) An application form provided by FSA;

(2) Certification of the total number and location of acres planted to durum wheat on which an eligible fungicide was applied specifically to control Fusarium head blight;

(3) Certification of the date durum wheat, on which an eligible fungicide was applied specifically to control Fusarium head blight, was planted;

(4) Certification of the type of eligible fungicide applied to acres certified as planted to durum wheat;

(5) Certification of the date eligible fungicide was applied to acres certified as planted to durum wheat;

(6) Documentation providing adequate proof, as determined by FSA, of the producer's actual cost of purchasing and applying eligible fungicide to acres certified as planted to durum wheat for one treatment; and

(7) Any other documentation as determined by FSA to be necessary to make a determination of eligibility of the producer.

(d) The producer requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information provided is subject to verification by FSA.

(e) Data furnished by the producer will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

§ 1413.107 Availability of funds.

(a) The 2008 Farm Bill authorizes up to $10 million to be appropriated for each of the 2009 through 2012 fiscal years for DWQP. Payments will not be made for claims for a particular crop year until after the application deadline, which is September 15 of that crop year, for the crop for which payment for the fungicide application is sought and only if funds are made available through an appropriation.

(b) In the event that approval of all eligible applications for fungicide treatments for a particular crop would result in expenditures in excess of the amounts appropriated for that crop year, the FSA Deputy Administrator will prorate the funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will prorate the payments in such manner as it determines appropriate and reasonable.

(c) Claims that are unpaid or paid at a reduced rate for a crop year for any reason will not be carried forward for payment under other funds for later crop years, unless provided for by law and approved by the Deputy Administrator. Such unpaid claims will be considered, as to any unpaid amount, void and nonpayable.

§ 1413.108 Payment calculation.

(a) Subject to the availability of DWQP funds, the payment to an eligible producer will be the result of adding (adjusted for the producer's share of the crop):

(1) The lesser of:

(i) The result of multiplying the number of acres certified by the producer as planted to durum wheat on which an eligible fungicide was applied, during the flowering stage, times the per acre national fungicide acquisition payment rate as set by the Deputy Administrator; or

(ii) Fifty percent of the producer's actual cost of purchasing eligible fungicide for acres certified as planted to durum wheat and treated for the applicable crop year in a manner that would otherwise generate a payment under paragraph (a)(1)(i) of this section; plus

(2) The result of multiplying the number of acres certified as planted to durum wheat on which an eligible fungicide was applied during the flowering stage, times the State application per-acre payment rate set by the State

committee, with such application payment not to exceed 50 percent of the actual application cost certified to by the producer.

(b) The national fungicide acquisition payment rate set by the Deputy Administrator will be based on 50 percent of the national average cost of eligible fungicide (only including the cost of the chemical itself), applied to one acre of durum wheat for the applicable crop year.

(c) The State application payment rate set by the State committee will be based on 50 percent of the State average cost of applying an eligible fungicide to one acre of durum wheat for the applicable crop year.

§ 1413.109 Refunds, joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this subpart, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and otherwise determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an application for payment as having an interest in an operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1413.110 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, a producer will be ineligible for payment through the DWQP if the producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this subpart to any producer engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of disbursement of the CCC funds. Any producer engaged in acts prohibited by this section and any producer receiving payment as specified in this subpart will be jointly and severally liable with other persons or producers involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1413.111 Miscellaneous provisions.

(a) *Other interests.* Any payment to any producer under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government.

(b) *Assignments.* Any producer entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

(c) *Offsets.* CCC may offset or withhold any amount due to CCC from any benefit provided under this subpart in accordance with the provisions of part 1403 of this chapter and part 792 of this title.

(d) *Violations of highly erodible land and wetland conservation provisions.* The provisions of part 12 of this title apply

to this subpart. That part sets out certain conservation requirements as a general condition for farm benefits.

(e) *Violations regarding controlled substances.* The provisions of §718.6 of this title, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

§1413.112 Appeals.

(a) *Appeals.* Appeal regulations set forth at parts 11 and 780 of this title apply to determinations made under this subpart.

(b) *Determinations not eligible for administrative review or appeal.* CCC determinations and policies that are not limited to a specific individual producer's application are not to be construed to be individual program eligibility determinations or adverse decisions and are, therefore, not subject to administrative review or appeal under 7 CFR part 11 or part 780 of this title (but nothing in the regulations for this program will limit the ability of the National Appeals Division to decide its own jurisdiction under part 11). Such determinations include, but are not limited to, application periods, deadlines, crop years, prices, general statutory or regulatory provisions that apply to similarly situated producers, national average payment prices, and payment factors established by CCC for DWQP for which this subpart applies or similar matters requiring CCC determinations.

§1413.113 Deceased individuals or dissolved entities.

(a) Payment may be made for an eligible application on behalf of an eligible producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract on behalf of the producer signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§1413.114 Records and inspections.

(a) Any producer receiving DWQP payments, or any other legal entity or person who provides information for the purposes of enabling a producer to receive a DWQP payment, must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the U.S. Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable acreage in which the producer has an interest for the purpose of confirming the accuracy of information provided by or for the producer.

(b) [Reserved]

Subparts B–C [Reserved]

PART 1415—GRASSLANDS RESERVE PROGRAM

Sec.

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AUTHORITY: 16 U.S.C. 3838n–3838q.

SOURCE: 75 FR 73925, Nov. 29, 2010, unless otherwise noted.

§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners and operators in protecting grazing uses and related conservation values by conserving and restoring grassland resources on eligible private lands through rental contracts, easements, and restoration agreements.

(b) GRP emphasizes:

(1) Supporting grazing operations;

(2) Maintaining and improving plant and animal biodiversity; and

(3) Protecting grasslands and shrublands from the threat of conversion to uses other than grazing.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction, development of the national allocation formula, and development of broad national ranking criteria;

(2) Use a national allocation formula to provide GRP funds to NRCS State Conservationists and FSA State Executive Directors that emphasizes support for grazing operations, biodiversity of plants and animals, and grasslands under the greatest threat of conversion to uses other than grazing. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population of a grassland-dependent bird(s) or animal(s);

(3) Ensure the national, State, and local-level information regarding program implementation is made available to the public;

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction; and

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

(1) Determining how funds will be used and how the program will be implemented at the State level to achieve the program purposes;

(2) Identifying State priorities for project selection based on input from the State Technical Committee;

(3) Identifying Department of Agriculture (USDA) employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;

(4) Developing, with advice from the State Technical Committee, program outreach materials at the State and local levels to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;

(5) Approving conservation practices eligible for cost-share and cost-share rates;

(6) Developing GRP management plans and restoration agreements, when applicable;

(7) Administering and enforcing the terms of easements and rental contracts unless this responsibility is transferred to an eligible entity as provided in § 1415.17 and § 1415.18; and

(8) Developing, with advice from the State Technical Committee, criteria for ranking eligible land consistent with national criteria and program objectives and State priorities.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The NRCS Chief or the FSA Administrator may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part, which is required by law, may be waived.

(f) No delegation in this part to lower organizational levels will preclude the NRCS Chief or the FSA Administrator from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. Eligible entities wishing to enter into a cooperative agreement under §1415.17 in order to purchase, own, write, and hold easements may apply on a continuous basis to the NRCS State Conservationist. The NRCS State Conservationist and FSA State Executive Director will establish cut-off periods to rank and select applications for participation. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded eligible applications will remain on file until they are funded or the applicant chooses to be removed from consideration.

(j) The services of third parties as provided for in part 652 of this title may be used to provide technical services to participants.

§1415.3 Definitions.

Activity means an action other than a conservation practice that is included as a part of a GRP management or conservation plan that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the functions and values restored, protected, or enhanced through an easement or rental contract.

Administrator means the Administrator of FSA or the person delegated authority to act for the Administrator.

Applicant means a person, legal entity, joint operator, or Indian Tribe who applies to participate in the program.

Chief means the Chief of NRCS or designee.

Biological diversity means the variety and variability among living organisms and the ecological complexes in which they live.

Commodity Credit Corporation is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. The CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The CCC provides the funding for GRP, and FSA and NRCS administer GRP on its behalf.

Common grazing practices means those grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar name.

Conservation plan means a record of the GRP participants' decisions and supporting information that will be developed to address resource concerns in addition to grazing land uses. The conservation plan will describe the implementation and maintenance of GRP management and conservation practices directly related to any additional land eligibility criteria under which the land is enrolled. Additional land eligibility criteria may include, but is not limited to, significant animal or plant habitat and historical or archeological resources.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS Field Office Technical Guide (FOTG) standards and specifications.

Conservation values means those natural resource attributes that sustain and enhance ecosystem functions and values of the grassland area including, but not limited to, habitat for grassland and shrubland dependent plants and animals, native plant and animal biodiversity, soil erosion control, forage production, and air and water quality protection.

Cost-share payment means the payment made by USDA to a program participant or vendor to achieve the restoration, enhancement, and protection goals in accordance with the GRP restoration plan component of the restoration agreement.

Dedicated account means a dedicated fund of the eligible entity held in a separate account for the management, monitoring, and enforcement of conservation easements and that cannot be used for other purposes.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States, an eligible entity, or both for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed by a conservation easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States, an eligible entity, or both under GRP.

Eligible entity means, for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d), an agency of State or local government, an Indian Tribe, or a nongovernmental organization that has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland; has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and has the resources necessary to effectuate the purposes of the charter.

Enhancement means to increase or improve the viability of grassland and grazing resources, including habitat for declining species of grassland dependent birds and animals.

Farm Service Agency is an agency of the Department of Agriculture.

FSA State Executive Director means the FSA employee authorized to implement GRP and direct and supervise FSA activities in a State, Caribbean Area, or the Pacific Islands Area.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Fire pre-suppression means activities as outlined in a GRP management plan such as the establishment and maintenance of firebreaks and prescribed burning to prevent or limit the spread of fires.

Forb means any herbaceous plant other than those in the grass family.

Functions and values of grasslands and shrublands means ecosystem services provided, including domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native

insects), water quality and quantity benefits, aesthetics, open space, and recreation.

Grantor means the landowner who is transferring land rights to the United States or an eligible entity, or both through an easement.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

GRP management plan means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the FOTG. The GRP management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or conservation plan, if applicable, and a description of USDA's right of ingress and egress.

Grazing value means the financial worth of the land as used for grazing or forage production. The term is used in the calculation of compensation for rental contracts and easements. For easements, this value is determined by NRCS through an appraisal process or a market survey process. For rental contracts, FSA determines the grazing value based upon an administrative process.

Historical and archeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*);

(2) Formally determined eligible for listing the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and Keeper of the National Register in accordance with section 106 or the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the Tribal Register of Historic Places (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SPHO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Improved rangeland or pastureland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. The term landowner includes Indian Tribes. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners.

Legal entity means an entity created under Federal or State law and that: (1) Owns land or an agricultural commodity, product, or livestock; or (2) produces an agricultural commodity, product, or livestock.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to manage and prevent deterioration, repair damage, or replace the practice to its original condition if one or more components fail.

Native means a species that is indigenous and is a part of the original fauna or flora of the area.

Natural Resources Conservation Service is an agency of the Department of Agriculture.

NRCS State Conservationist means the NRCS employee authorized to implement GRP and direct and supervise

NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

Naturalized means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. The term naturalized does not include noxious weeds.

Nesting season means the time of year that grassland dependent birds in significant decline in the local area build nests or otherwise find a place of refuge for purposes of reproduction.

Nongovernmental organization means any organization that:

(1) Is organized for, and at all times since, the formation of the organization, and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) or 509(a)(2) of that Code, or

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Participant means a person, legal entity, joint operation, or Indian Tribe who is accepted to participate in GRP through a rental contract or option agreement to purchase an easement.

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and cultural treatments, such as tillage, aeration, fertilization, mowing, and weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

Permanent easement means an easement that lasts in perpetuity or for the maximum duration allowed under the law of a State.

Private land means land that is not owned by a governmental entity and includes Tribal lands.

Purchase price means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement.

Rangeland means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon juniper are also included as rangeland.

Rental contract means the legal document that specifies the obligations and rights of a participant in GRP, including the annual rental payments to be provided to the participant for the length of the contract to maintain or restore grassland functions and values under GRP.

Restoration means implementing any conservation practice, system of practices, or activities to restore functions and values of grasslands and shrublands. The restoration may re-establish grassland functions and values on degraded land, or on land that has been converted to another use.

Restoration agreement means an agreement between the program participant and NRCS or eligible entity to carry out activities and conservation practices necessary to restore or improve the functions and values of that land. A restoration agreement will include a restoration plan.

Restoration plan is the portion of the restoration agreement that includes the schedule and conservation practices and activities to restore the functions and values of grasslands and shrublands, including protection of associated streams, ponds, and wetlands. The restoration plan incorporates the requirement that program participants

will maintain GRP-funded conservation practices and activities for their expected lifespan as described in the plan.

Right of enforcement means a property interest in the easement the Chief may exercise on behalf of the United States under specific circumstances in order to enforce the terms of the conservation easement. The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

Secretary means the Secretary of the Department of Agriculture.

Shrubland means land where the dominant plant species is shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

Significant decline means a decrease of a species population to such an extent that it merits conservation priority as determined by the State Conservationist, in consultation with the State Technical Committee.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Tribal land means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes; or

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or

(3) Land which is subject to rights of use, occupancy, and benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

USDA means the Department of Agriculture and its agencies and offices, as applicable.

§ 1415.4 Program requirements.

(a) Except as provided for under § 1415.17, only landowners may submit applications for easements. For rental contracts, applicants must own or provide written evidence of control of the property for the duration of the rental contract.

(b) The easement or rental contract will require that the area be maintained in accordance with GRP goals and objectives for the term of the easement or rental contract, including the conservation, protection, enhancement, and if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a GRP management plan approved by NRCS. When an eligible entity holds the GRP easement, NRCS will develop GRP management plans with eligible entities. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

(d) The easement or rental contract must grant USDA or its representatives a right of ingress and egress to the easement or rental contract area. For easements, this access is legally described by the conservation easement deed and the GRP management plan. Access to rental contract areas is identified in the GRP management plan.

(e) Easement participants are required to convey unencumbered title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States or eligible entity is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by USDA.

(f) Landowners are required to use a standard GRP conservation easement deed developed by USDA or developed by an eligible entity and approved by USDA under § 1415.17 of this part. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental contract, and comply with all terms and conditions of the GRP management plan and any associated conservation plan or restoration agreement.

(h) Easements and rental contracts allow, consistent with their terms and the program purposes, the following activities as outlined in the GRP management plan:

(1) Common grazing practices, including maintenance and necessary conservation practices and activities (*e.g.*, prescribed grazing; upland wildlife habitat management; prescribed burning; fencing, watering, and feeding necessary for the raising of livestock; and related forage and seed production) on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law;

(3) Fire pre-suppression, rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;

(5) Facilities for power generation through renewable sources of energy production provided the scope and scale of the footprint of the facility and associated infrastructure is consistent with program purposes as determined by USDA through analysis of the potential site-specific environmental effects; and

(6) Other activities that USDA determines the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under an easement or rental contract. This includes infrastructure development along existing right-of-ways where the easement deed allows the landowner to grant right-of-ways when it is determined by NRCS that granting such right-of-ways are in the public interest, that grassland resources and related conservation values will not be adversely impacted, and the landowner agrees to a restoration plan for the disturbed area as developed by NRCS, but at no cost to NRCS. This also includes undeveloped, passive, recreational uses such as hiking, camping, bird watching, hunting, and fishing as long as such uses, as determined by the grantee, do not impair the grazing uses and other conservation values.

(i) Easement and rental contracts prohibit the following activities:

(1) The production of crops (other than hay), orchards, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land and related conservation values; and

(2) Except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.

(j) Rental contracts may be terminated by USDA without penalty or refund if the original participant dies, is declared legally incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert a rental contract to an easement, provided that funds are available and the project meets conditions established by USDA. Land cannot be enrolled in both a rental contract option and an easement enrollment option at the same time. The rental contract will be terminated prior to the date the easement is recorded in the local land records office.

(l) Rental contract participants are required to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary.

(m) Easement participants are required to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly owned land is not eligible.

(b) Land is eligible for funding consideration if the State Conservationist determines that the land is:

(1) Grassland, land that contains forbs or shrubland (including improved

rangeland and pastureland) for which grazing is the predominant use; or

(2) Located in an area that has been historically dominated by grassland, forbs, or shrubland, and the State Conservationist, with advice from the State Technical Committee, determines that it is compatible with grazing uses and related conservation values, and

(i) Could provide habitat for animal or plant populations of significant ecological value if the land is retained in its current use or is restored to a natural condition,

(ii) Contains historical or archeological resources, or

(iii) Would address issues raised by State, regional, and national conservation priorities.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental contract. Incidental lands may include relatively small areas that do not specifically meet the eligibility requirements, but as a part of the land unit, may contribute to grassland functions and values and related conservation values, or its inclusion may increase efficiencies in land surveying, easement management, and monitoring by reducing irregular boundaries.

(d) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract, easement, or deed restriction, or if the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values. This land becomes eligible for enrollment in GRP if the existing contract, easement, or deed restriction expires or is terminated, and the grassland values and functions are no longer protected.

(e) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on the property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP, an applicant, except as otherwise described in § 1415.17:

(a) Must be a landowner for easement participation or be a landowner or have control of the eligible acreage being offered for rental contract participation;

(b) Agree to provide such information to USDA that is necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in part 1400 of this chapter, unless exempted under part 1400 of this chapter; and

(d) Meet the conservation compliance requirements found in part 12 of this title.

[75 FR 73925, Nov. 29, 2010, as amended at 83 FR 23209, May 18, 2018]

§ 1415.7 Application procedures.

(a) Applicants, except as otherwise described under § 1415.17, may submit an application through a USDA Service Center for participation in GRP. Applications may be submitted throughout the year.

(b) By filing an application for participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental contract for which they seek to enroll their land. Rental contracts may be for the duration of 10-years, 15-years, or 20-years; easements may be permanent in duration or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to NRCS State Conservationists and FSA State Executive Directors, national guidelines for establishing State-specific ranking criteria for selection of applications for funding.

(b) NRCS State Conservationists and FSA State Executive Directors, with advice from State Technical Committees, establish criteria to evaluate and rank applications for easement and rental contract enrollment, including applications from eligible entities under §1415.17, following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

(1) Grazing operations;

(2) Protection of grassland, land that contains forbs, and shrubland at the greatest risk from the threat of conversion to uses other than grazing;

(3) Plant and animal biodiversity; and

(4) In ranking parcels offered by eligible entities, these additional criteria will also be considered—

(i) Leveraging of non-Federal funds, and

(ii) Entity contributions in excess of 50 percent of the purchase price, as defined in §1415.3.

(d) When funding is available, NRCS State Conservationists and FSA State Executive Directors will periodically select for funding the highest ranked applications, including applications from entities under §1415.17, based on applicant and land eligibility and the State-developed ranking criteria.

(e) NRCS State Conservationists and FSA State Executive Directors may establish separate ranking pools to address, for example, specific conservation issues raised by State, regional, and national conservation priorities.

(f) The NRCS State Conservationist and FSA State Executive Director, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The NRCS State Conservationist and the FSA State Executive Director, with advice from the State Technical Committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, the State Conservationist or State Executive Director may select a lower ranked application that can be fully funded.

(i) Land enrolled in a Conservation Reserve Program (CRP) contract that is within one year of the scheduled expiration date will receive a priority for enrollment. To receive this priority, the following criteria must be met:

(1) The land must be eligible as defined in §1415.5;

(2) USDA, with advice from the State Technical Committee, must determine it is of high ecological value and under significant threat of conversion to uses other than grazing;

(3) The land must be offered for easement or 20-year rental contract enrollment;

(4) Expired CRP land enrolled under this priority will not exceed 10 percent of the total number of acres accepted for national enrollment in GRP in any year; and

(5) This priority applies only up to 12 months before the scheduled expiration of the CRP contract.

(j) USDA will manage the program nationally to ensure that, to the extent practicable, 60 percent of funds are used for the purchase of easements, either directly or through cooperative agreements with eligible entities as set forth in §1415.17 and 40 percent of funds are used for rental contracts.

§ 1415.9 Enrollment of easements and rental contracts.

(a) Based on the priority ranking, NRCS or FSA, as appropriate, will notify applicants in writing of their tentative acceptance into the program for either rental contract or conservation easement options. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant. Enrollment under cooperative agreements is described under §1415.17.

(b) An offer of tentative acceptance into the program neither binds USDA to acquire an easement or enter into a

rental contract, nor binds the applicant to convey an easement, enter into a rental contract, or agree to restoration activities.

(c) Offer of enrollment will be through either:

(1) An agreement to purchase an easement presented by NRCS to the applicant which will describe the easement, the easement terms and conditions, and other terms and conditions that may be required by NRCS; or

(2) A rental contract will be presented by FSA to the applicant which will describe the contract area, the contract terms and conditions, and other terms and conditions that may be required by FSA.

(d) For rental contracts, land will be considered to be enrolled in GRP once an FSA representative approves the GRP rental contract. FSA may withdraw the offer before approval of the contract due to lack of available funds or other reasons.

(e) For easements, after the option agreement to purchase an easement is executed by NRCS and the participant, the land will be considered enrolled in GRP. NRCS will proceed with the development of the GRP management plan, conservation or restoration plan if applicable, and various easement acquisition activities, which may include conducting a legal survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement GRP.

(f) Prior to closing an easement, NRCS may withdraw the land from enrollment at any time due to lack of available funds, title concerns, or other reasons.

§ 1415.10 Compensation for easements and rental contracts acquired by the Secretary.

(a) The Chief will not pay more than the fair market value of the land, less the grazing value of the land encumbered by the easement.

(b) To determine this amount, the Chief will pay as compensation the lowest of:

(1) The fair market value of the land encumbered by the easement as determined by the Chief using—

(i) The Uniform Standards of Professional Appraisal Practice, or

(ii) An area-wide market analysis or market survey;

(2) The amount corresponding to a geographical cap, as determined by the State Conservationist, with advice from the State Technical Committee; or

(3) An offer made by the landowner.

(c) For 10-, 15-, and 20-year rental contracts, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the contract, as determined by FSA. As provided by the regulations at part 1400 of this title, payments made under one or more rental contracts to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(d) In order to provide for better uniformity among States, the NRCS Chief and FSA Administrator may review and adjust, as appropriate, State or other geographically based payment rates for rental contracts.

(e) Easement or rental contract payments received by a participant will be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

(f) Easement payments will be made in a single payment to the landowner unless otherwise requested by the landowner.

(g) USDA may accept and use contributions of non-Federal funds to support the purposes of the program. These funds are available to USDA without further appropriation and until expended, to carry out the program.

(h) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through GRP, and that ecosystem credits may be gained as a result of implementing activities compatible with the purposes of a GRP easement, rental contract, or associated restoration agreement. USDA asserts no direct or indirect interest in these credits except:

(1) In the event the participant sells or trades credits arising from GRP

funded activities, USDA retains the authority to ensure that the requirements for GRP rental contracts, easements, or restoration agreements are met and maintained consistent with this part; and

(2) If activities required under an ecosystem credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are required to obtain an assessment from USDA about the compatibility of the activity prior to entering into such agreements.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental contracts. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration plan component of the restoration agreement identifies conservation practices and activities necessary to restore or improve the functions and values of the grassland to meet both USDA and the participant's objectives and purposes of the program. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental contract through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, determines the conservation practices and activities and the cost-share percentages, not to exceed statutory limits available under GRP. A list of conservation practices and activities approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS may work through the local conservation district with the program participant to determine the terms of the restoration plan. The conservation district may assist NRCS with determining eligible conservation practices and activities and approving restoration agreements.

(c) Only approved conservation practices and activities are eligible for cost-sharing. Payments under the GRP restoration agreements may be made to the participant of not more than 50 percent for the cost of carrying out the conservation practices or activities. As provided by the regulations at part 1400 of this chapter, payments made under one or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(d) The participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement.

(e) All conservation practices must be implemented in accordance with the FOTG.

(f) Technical assistance is provided by NRCS, or an NRCS approved third party.

(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration.

(h) The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

(i) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(j) Conservation practices and activities identified in the restoration plan

may be implemented by the participant or other designee.

(k) Cost-share payments will not be made for conservation practices or activities implemented or initiated prior to the approval of a rental contract or easement acquisition unless a written waiver is granted by the NRCS State Conservationist or FSA State Executive Director, as appropriate, prior to installation of the practice.

(l) Upon transfer of an easement with a restoration agreement to an eligible entity as described in § 1415.18, the entity will be responsible for administration of the agreement and providing funds for payment of any costs associated with the completion of the restoration agreement. The eligible entity may, with participant consent, revise an existing restoration agreement or develop a new restoration agreement. Restoration plans must be consistent with the GRP management plan or any associated conservation plan as described in § 1415.4.

(m) Cooperating entities under § 1415.17 will be responsible for development, administration, and implementation costs of restoration plans.

§ 1415.12 Modifications to easements and rental contracts.

(a) After an easement has been recorded, no substantive modification will be made to the easement. Modifications that would not result in acquisition or divestiture of additional property rights may be made.

(b) State Conservationists may approve modifications for restoration agreements and GRP management plans or conservation plans where applicable, as long as the modifications do not affect the provisions of the easement and meet program objectives.

(c) USDA may approve modifications to rental contracts, including corresponding changes to conservation plans, GRP management plans, and restoration plans to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to an applicant's acceptance into the program will void the offer of enrollment, unless at the option of the State Conservationist or State Executive Director, as appropriate, an offer is extended to the new landowner and the new landowner agrees to the same easement or rental contract terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner is responsible for complying with the terms of the recorded easement, and the contract successor is responsible for complying with the terms of the rental contract and for assuring completion of all activities and practices required by any associated restoration agreement. Eligible cost-share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to participants, the United States bears no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments, without the accrual of interest, pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement will apply to any of its agents or assigns. All obligations of the participant under the GRP conservation easement deed also bind the participant's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental contracts may be transferred to another landowner, operator, or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by FSA to be eligible to participate in GRP and must assume full responsibility under

the contract. FSA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental contract, and the new landowner, operator, or tenant is not eligible to participate in the program or declines to assume responsibility under the contract.

§ 1415.14 Misrepresentation and violations.

(a) The following provisions apply to violations of rental contracts:

(1) Rental contract violations, determinations, and appeals are handled in accordance with the terms of the rental contract;

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest, in accordance with part 1403 of this title; and

(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:

(1) Easement violations are handled under the terms of the easement deed;

(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement deed or remedy deficiencies or violations;

(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice; and

(4) The participant will be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental, or easement payment or portion thereof due any person under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity will use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, ranch land, or grassland for grazing and conservation purposes;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship;

(4) The availability of funds; and

(5) For nongovernmental organizations, the existence of a dedicated account and funds for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions;

(2) The management and enforcement of the interests acquired;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP;

(5) The parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information in an a attachment to the cooperative agreement;

(6) The allowance of parcel substitution upon mutual agreement of the parties;

(7) The manner in which violations are addressed;

(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements;

(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary;

(10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the GRP management plan or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise;

(11) The source of funding. The eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the purchase price;

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity;

(13) GRP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity;

(14) NRCS may provide a share of the purchase price of an easement under the program. The eligible entity will be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in §1415.3;

(15) The eligible entity's succession plan, which describes how its successors or assigns will hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS; and

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Easements funded under the cooperative agreement option will be in perpetuity, except where State law prohibits a permanent easement, and will require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement.

(e) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity will be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates will be reviewed and approved by the Chief.

NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(1) In order to protect the public investment, the conveyance document must contain a right of enforcement. NRCS will specify the terms for the right of enforcement clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government;

(2) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS;

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed;

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation will be provided to NRCS by the eligible entity; and

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in GRP.

§ 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the GRP management plan or conservation plan, as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections to verify the eligible entities enforcement of the easement, which includes the terms and requirements set forth in the GRP management plan and any associated restoration or conservation plan for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement will apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranch land, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in §1415.17(b)(5), if the entity is a nongovernmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief or his or her successors and assigns, will retain a right of enforcement in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed will continue to apply to the United States. Upon transfer of the

easement, the easement holder will be responsible for enforcement of the GRP management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, GRP-funded easements cannot be condemned.

§ 1415.19 Appeals.

(a) Applicants or participants may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in parts 614 and 780 of this title.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the NRCS Chief or the FSA Administrator, as applicable, under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and will only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its Federally held property rights are under the jurisdiction of the Federal District Courts and are not subject to review under administrative appeal regulations.

§ 1415.20 Scheme or device.

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part will report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

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AUTHORITY: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141; and Title I, Pub. L. 116–20.

SOURCE: 79 FR 21097, Apr. 14, 2014, unless otherwise noted.

Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

§ 1416.1 Applicability.

(a) This subpart establishes general conditions for this subpart and subparts B through E of this part and applies only to those subparts. Subparts B through E cover the following programs authorized by the Agricultural Act of 2014 (Pub. L. 113–79, also referred to as the 2014 Farm Bill):

(1) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP);

(2) Livestock Forage Disaster Program (LFP);

(3) Livestock Indemnity Payments Program (LIP); and

(4) Tree Assistance Program (TAP).

(b) To be eligible for payments under these programs, participants must comply with all provisions under this subpart and the relevant particular subpart for that program. All other provisions of law also apply.

§ 1416.2 Administration of ELAP, LFP, LIP, and TAP.

(a) The programs in subparts B through E of this part is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) (who also serves as the Executive Vice-President, CCC), and the Deputy Administrator for Farm Programs, FSA (referred to as the ''Deputy Administrator'' in this part).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the regulations of this part that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part or

(2) Require a county FSA committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory deadlines, or other program requirements of this part in cases where lateness or failure to meet such requirements does not adversely affect operation of the programs in this part. Participants have no right to an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

(f) Payments issued under this part are subject to the availability of funds under Federal law. Within whatever funding limitation that may exist under law, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. If funds are limited, for a particular program year, payments may be delayed until the time for applying for the payment for that program year has passed. In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines necessary and appropriate and reasonable. Applications for payment that are unpaid or prorated for a program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49463, Oct. 2, 2018; 85 FR 10963, Feb. 26, 2020]

§ 1416.3 Eligible producer.

(a) *Eligible producer* means, in addition to other requirements as may apply, an individual or legal entity who is an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop or livestock and who is entitled to share in the crop or livestock available for marketing from the farm, or would have shared had the crop or livestock been produced, and who also meets the requirements of paragraph (b) of this section. The term eligible producer can include a livestock owner or contract grower who satisfies other requirements of this part.

(b) An individual or legal entity seeking to be an eligible producer under this part must submit a farm operating plan in accordance with part 1400 of this chapter and be a:

(1) Citizen of the United States;

(2) Resident alien; for purposes of this part, resident alien means ''lawful alien'';

(3) Partnership of citizens of the United States;

(4) Corporation, limited liability company, or other organizational structure organized under State law; or

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49463, Oct. 2, 2018; 85 FR 10963, Feb. 26, 2020]

§ 1416.5 [Reserved]

§ 1416.6 Payment eligibility and limitation.

(a) For 2019 and each subsequent program year, a person, legal entity, or member of a joint venture or general partnership, as determined in part 1400 of this chapter, cannot receive, directly or indirectly, more than $125,000 per program year under LFP.

(b) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part in order to help prevent a person or legal entity being paid more than the total value of their loss.

(c) For the purposes of administering LIP, LFP, ELAP, and TAP, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an AGI that exceeds $900,000 will not be eligible to receive benefits under this part.

(d) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP.

[83 FR 49463, Oct. 2, 2018, as amended at 85 FR 10963, Feb. 26, 2020]

§ 1416.7 Misrepresentation.

(a) A person or legal entity who is determined to have misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for which that person or legal entity would not otherwise be entitled, is ineligible for program payments under this part and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter. The person or legal entity is ineligible and will be denied program benefits under this part for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) For each year of ineligibility determined according to paragraph (a) of this section, a person or legal entity will refund to CCC all program payments, in accordance with §1416.11, received by such person or legal entity with respect to all applications under this part, as may be applicable, if the person or legal entity is determined to have knowingly misrepresented any fact affecting a program determination

[83 FR 49464, Oct. 2, 2018 as amended at 85 FR 10963, Feb. 26, 2020]

§ 1416.8 Appeals.

Appeal regulations in parts 11 and 780 of this title apply to this part.

§ 1416.9 Offsets, assignments, and debt settlement.

(a) Any payment under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to payments made under this part.

(b) A participant may assign any payment(s) under this part in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49464, Oct. 2, 2018]

§ 1416.10 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, or TAP must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

§ 1416.11 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment or assistance arising under ELAP, LFP, LIP, or TAP and if any refund of a payment to CCC will otherwise become due in connection with this part, the participant must refund to CCC all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 1403 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

§ 1416.12 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this chapter are met.

§ 1416.13 Deceased individuals or dissolved entities.

(a) The provisions of part 707 of this chapter apply to the programs of this part.

(b) [Reserved].

[83 FR 49464, Oct. 2, 2018]

§ 1416.14 Miscellaneous.

(a) As a condition of payment eligibility under ELAP, LFP, LIP, or TAP, a participant must have been in compliance with the applicable provisions of parts 12 and 718 of this title and 1400 of this chapter, and must not otherwise be precluded from receiving payments under those provisions or under any law.

(b) In order to be eligible for benefits, participants in the programs specified in this part must submit an accurate acreage report annually as required by these provisions.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49464, Oct. 2, 2018; 85 FR 10963, Feb. 26, 2020]

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

§ 1416.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated for eligible losses due to an eligible adverse weather or eligible loss condition that occurred in the program year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator. ELAP does not cover losses that are covered under LFP or LIP.

§ 1416.102 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beefalo heifer is also considered an adult beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo or bison bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy bull means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy cow means a female bovine dairy breed animal used for the

purpose of providing milk for human consumption that had delivered one or more offspring by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Agricultural operation means a farming operation.

APHIS means the Animal and Plant Health Inspection Service.

Application means CCC or FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

Aquatic species means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However, aquatic species do not include reptiles or amphibians.

Bait fish means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment are eligible for payment under ELAP.

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

Buck means a male goat.

Cattle tick fever means a severe and often fatal disease that destroys red blood cells of cattle, commonly known as Texas or cattle fever, which is spread by Rhipicephalus (Boophilus) annulatus, and the southern cattle tick, R. (Boophilus) microplus.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Eligible adverse weather means, as determined by the Deputy Administrator, an extreme and abnormal damaging weather event that is not expected to occur during the loss period, which results in eligible losses. The eligible adverse weather would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance should be provided to producers. Adverse weather may include, but is not limited to, blizzard, eligible winter storms, and wildfires. Specific eligible adverse weather may vary based on the type of loss. Identification of eligible adverse weather will include locations (National, State, or county-level) and start and end dates.

Eligible drought means that any area of the county has been rated by the U.S. Drought Monitor as having D2 (severe drought) intensity for at least 8 consecutive weeks for the specific type of eligible grazing land or pastureland for the county, or D3 (extreme drought) or D4 (exceptional drought) intensity for the specific type of eligible grazing land or pastureland for the county, as determined by the Secretary:

(1) At any time during the program year, for additional honey bee feed loss;

(2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock; or

(3) At any time during the normal grazing period, for losses resulting from the additional cost incurred to transport livestock feed or eligible livestock to feed, for additional mileage above normal.

Eligible grazing land means land that is native or improved pastureland with permanent vegetative cover or land planted to a crop planted specifically for the purpose of providing grazing for eligible livestock.

Eligible loss condition means a condition that would have resulted in agricultural losses not covered by other

programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. Specific eligible loss conditions include, but are not limited to, disease (including cattle tick fever), insect infestation, and colony collapse disorder. Identification of eligible loss conditions will include locations (National, State, or county-level) and start and end dates. All other causes of losses are not covered, including, but not limited to, negligence, mismanagement, or wrongdoing by the producer.

Eligible winter storm means an event that is so severe as to directly cause loss and lasts in duration for at least 3 consecutive days and includes a combination of high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures. The wind, precipitation, and extremely cold temperatures must occur during the consecutive 3-day period, with wind and extremely cold temperatures occurring in each of the 3 days.

Equine animal means a weaned domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Farm-raised fish means any aquatic species that is propagated and reared in a controlled environment.

FSA means the Farm Service Agency.

Game or sport fish means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

Goat means a weaned domesticated, ruminant mammal of the genus Capra, including Angora goats.

Grazing animals mean those species of weaned livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are grazing or are present on grazing land or pastureland.Unweaned livestock are not grazing animals regardless of whether those unweaned livestock are present on grazing land or pastureland.

Grazing loss means the value, as calculated in §1416.110(g) or (m), of eligible grazing lost due to an eligible adverse weather or eligible loss condition based on the number of days that the eligible livestock were not able to graze the eligible grazing land during the normal grazing period.

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested during the 60 calendar days before the eligible adverse weather or eligible loss condition.

Nanny means a female goat.

Newborn livestock means livestock that are within 10 calendar days of the date of birth.

Non-adult beef cattle means a weaned beef breed bovine animal that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult beef cow or bull.

Non-adult beefalo means a weaned hybrid of beef and bison that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult beefalo cow or bull.

Non-adult buffalo or bison means a weaned animal of those breeds that on or before the beginning date of the eligible adverse weather or loss condition does not meet the definition of adult buffalo or adult bison cow or bull.

Non-adult dairy cattle means a weaned bovine animal of a breed used for the purpose of providing milk for human consumption that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult dairy cow or bull.

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

Normal mortality means the numerical amount, computed by a percentage of expected honeybee colony and farm-raised fish deaths, by category, that normally occur during a program year for a producer, as established for the area by the FSA State Committee for farm-raised fish, and as established nationwide by the Deputy Administrator for honeybee colonies.

Program year means for 2019 from October 1, 2018, through December 31, 2019; for 2020 and subsequent years, the program year is the same as the calendar year, January 1 through December 31.

Ram means a male sheep.

Reliable record means any non-verifiable record available that reasonably supports the eligible loss, as determined acceptable by the COC.

Sheep means a weaned domesticated, ruminant mammal of the genus Ovis.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at *http://droughtmonitor.unl.edu*. Should an eligible area not be covered by the U.S. Drought Monitor, the Deputy Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same range of categories as the U.S. Drought Monitor and use this information in place of the missing data for eligibility purposes.

Unweaned livestock means an animal not weaned from mother's milk or milk replacement to other nourishment. For ELAP purposes, unweaned livestock does not include turkeys, ducks, chickens, and geese.

Verifiable record means a document provided by the producer that can be verified by the County Committee (COC) through an independent source.

[79 FR 21097, Apr. 14, 2014, as amended at 79 FR 57721, Sept. 26, 2014; 79 FR 74571, Dec. 15, 2014; 83 FR 49464, Oct. 2, 2018; 85 FR 10963, Feb. 26, 2020; 87 FR 19785, Apr. 6, 2022; 88 FR 1891, Jan. 11, 2023]

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

(a) An eligible loss covered under this subpart is a loss that an eligible producer, livestock owner, or contract grower of livestock, or eligible producer of honeybees or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator. All other causes of loss are not considered an eligible loss condition, including, but not limited to, negligence, mismanagement or wrongdoing by the producer.

(b) A loss covered under LFP or LIP is not eligible for ELAP.

(c) To be an eligible loss in a program year, the loss must have been apparent to the person or legal entity providing the notice and to FSA in the program year for which payment is being requested.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the

beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(3) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock as specified in §1416.104(a) during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(4) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock as specified in §1416.104(a) due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. To be eligible, the loss must be incurred in combination with a loss described in paragraphs (d)(1), (2), or (3) of this section. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, include, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(5) A loss resulting from the additional cost of transporting water to eligible livestock as specified in §1416.104(a) due to eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be livestock that would normally have been grazing on eligible grazing lands that meet all of the following:

(i) Physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred;

(ii) That had adequate livestock watering systems or facilities before the eligible adverse weather, eligible loss condition, or eligible drought occurred; and

(iii) That the producer is not normally required to transport water to the livestock.

(6) A loss resulting from the additional cost incurred on or after January 1, 2021, to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. The cost of the feed is not eligible for payment. Negligence, mismanagement, or wrongdoing by the producer is not considered an eligible loss condition for livestock or feed transportation costs. To be eligible for a loss under this paragraph, the livestock must be livestock that would normally have been on eligible grazing lands physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred:

(1) During the normal grazing period, as specified in §1416.102;

(2) On eligible grazing land that is physically located in the county where the eligible adverse weather or eligible loss condition occurred;

(3) Due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storm, flood, hurricane, hail, lightning, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart C of this part, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss resulting from the additional cost associated with gathering livestock to inspect or treat for cattle tick fever, the livestock gathered for inspection or treatment for cattle tick fever must be considered eligible livestock as specified in §1416.104(d). To be considered an eligible loss, acceptable records, as determined by the Deputy Administrator, must be on file with APHIS, that provide the number of livestock gathered and inspected or treated for cattle tick fever and the number of treatments given during the program year.

(g) For honeybee feed or farm-raised fish feed losses to be considered an eligible loss, the honeybee feed or farm-raised fish feed loss must be one of the following:

(1) Loss of honeybee feed or farm-raised fish feed that was intended as feed for the participant's eligible honeybees or farm-raised fish that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, and wildfire.

(2) A loss resulting from the additional cost of purchasing additional honeybee feed, above normal quantities, required to maintain the honeybees during an eligible adverse weather or eligible loss condition, until additional honeybee feed becomes available, as determined by the Deputy Administrator. To be eligible the additional feed purchased above normal quantities must be feed that is fed to maintain honeybees in the county where the eligible adverse weather or eligible loss condition occurred. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, early fall frost, excessive rainfall, flood, hurricane, late spring frost, lightning, tidal surge, tornado, volcanic eruption, wildfire and eligible drought, as specified in §1416.102.

(h) For honeybee colony or honeybee hive losses to be considered eligible, the hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, colony collapse disorder, earthquake, eligible winter storm, as specified in §1416.102, excessive wind, flood, hurricane, lightning, tornado, volcanic eruption, and wildfire. Drought is not an eligible adverse weather event or eligible loss condition for honeybee hive losses. To be considered eligible for honeybee hive loss as of the beginning date of the eligible adverse weather event or eligible loss condition the honeybee hive must be all the following: Maintained for producing honey, pollinating, or breeding honeybees for commercial use in a farming operation; physically located in the county where the eligible adverse weather or eligible loss conditions occurred; and be a part of a honeybee farming operation in which the applicant has a risk in honey production, pollination, or honeybee breeding. To be considered an eligible honeybee colony loss, the colony loss must be in excess of normal mortality, as established by the Deputy Administrator,

and the loss could not have been prevented through reasonable and available measures. The notice of loss must be accompanied by acceptable documentation, as determined by the Deputy Administrator, that demonstrates an eligible loss occurred and was associated with an eligible adverse weather or eligible loss condition, and that generally accepted husbandry and production practices had been followed. For colony collapse disorder, acceptable documentation includes, but is not limited to, proof of beginning inventory and good management practices, and a producer certification that the loss of honeybee colonies was a direct result of at least 3 of the following 5 symptoms:

(1) The loss of live queen or drone bee populations inside the hives;

(2) Rapid decline of adult worker bee population outside the hives, leaving brood poorly or completely unattended;

(3) Absence of dead adult bees inside the hive and outside the entrance of the hive;

(4) Absence of robbing collapsed colonies;

(5) At the time of collapse, varroa mite and Nosema populations are not at levels known to cause economic injury or population decline.

(i) For death losses of bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, to be considered eligible, the producer must have incurred the fish loss, in excess of normal mortality, in the county where the eligible adverse weather or eligible loss condition occurred. The fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, earthquake, flood, hurricane, tidal surge, tornado, and volcanic eruption.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49465, Oct. 2, 2018; 85 FR 10964, Feb. 26, 2020; 87 FR 19785, Apr. 6, 2022; 88 FR 1891, Jan. 11, 2023]

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock grazing and feed; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; livestock must meet all the following conditions:

(1) Be grazing animals such as alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, deer, elk, emus, equine, goats, llamas, reindeer, or sheep;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock owner, for not less than 60 days before the beginning date of the eligible adverse weather or eligible loss condition; and

(4) Be livestock produced or maintained for commercial use or be livestock that is produced or maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the eligible adverse weather or eligible loss condition.

(b) The eligible livestock types for grazing and feed losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever are:

(1) Adult beef cows or bulls,

(2) Adult beefalo cows or bulls,

(3) Adult buffalo or bison cows or bulls,

(4) Adult dairy cows or bulls,

(5) Alpacas,

(6) Deer,

(7) Elk,

(8) Emus,

(9) Equine,

(10) Goats,

(11) Llamas,

(12) Non-adult beef cattle,

(13) Non-adult beefalo,

(14) Non-adult buffalo or bison,

(15) Non-adult dairy cattle,

(16) Ostriches,

(17) Reindeer, and

(18) Sheep.

(c) Ineligible livestock for grazing and feed losses and losses resulting from transporting water, feed, and livestock include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Animals that are not grazing animals;

(3) Yaks;

(4) Poultry;

(5) Swine;

(6) All unweaned beef and dairy cattle, and buffalo or bison and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition; and

(7) Livestock that are not produced for commercial use or those that are not produced or maintained in a commercial operation for livestock products, such as milk from dairy, including, but not limited to:

(i) Any wild free roaming livestock;

(ii) Horses and other animals used or intended to be used for racing or wagering;

(iii) Animals produced or maintained for hunting; and

(iv) Animals produced or maintained for consumption by owner.

(d) Under ELAP, ''contract growers'' only includes producers of livestock, other than feedlots, whose income is dependent on any of the following: Actual weight gain of the livestock, number of offspring produced from the livestock, or quantity of products (eggs, milk, etc.) produced from the livestock.

(e) For honeybee colony, hive, and feed losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(f) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment and the farm-raised fish must:

(1) For feed losses:

(i) Be an aquatic species that is propagated and reared in a controlled environment;

(ii) Be maintained and harvested for commercial use as part of a farming operation; and

(iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

(i) Be bait fish, game fish, or another aquatic species deemed eligible by the Deputy Administrator that are propagated and reared in a controlled environment;

(ii) Been maintained for commercial use as part of a farming operation; and

(iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49465, Oct. 2, 2018;85 FR 10964, Feb. 26, 2020; 87 FR 19785, Apr. 6, 2022; 88 FR 1891, Jan. 11, 2023]

§ 1416.105 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer and receive payments for feed losses; losses resulting from transporting water, feed, or livestock; and gathering livestock to treat for cattle tick fever; the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock for not less than 60 days before the beginning date of the eligible adverse weather or eligible loss condition; and

(2) Had a loss that is determined to be eligible as specified in §1416.103(d) or (f).

(b) To be considered an eligible livestock producer for grazing losses and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock for not less than 60 days before the beginning date of the eligible adverse weather or eligible loss condition;

(2) Had a loss that is determined to be eligible as specified in §1416.103(e);

(3) Had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(4) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for eligible livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in §1416.104(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in §1416.103(h) or (i).

(d) To be considered an eligible farm-raised fish producer for feed and death loss purposes, the participant must have produced eligible farm-raised fish, as specified in §1416.104(h), with the intent to harvest for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in §1416.103(h) or (j);

(e) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in §1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49466, Oct. 2, 2018; 85 FR 10964, Feb, 26, 2020; 87 FR 19785, Apr. 6, 2022]

§ 1416.106 Notice of loss and application process.

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA county office, the following:

(1) A notice of loss to FSA as specified in §1416.107(a),

(2) A completed application as specified in §1416.107(b) for one or both of the following:

(i) For livestock feed and grazing losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, a completed Emergency Loss Assistance for Honeybees or Farm-Raised Fish Application;

(3) A report of acreage, if applicable, as determined by the Deputy Administrator;

(4) A copy of the participant's grower contract, if the participant is a contract grower;

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, honeybee colonies, hives, farm-raised fish, and loss;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) A socially disadvantaged, limited resource, beginning, or veteran farmer or rancher certification, if applicable.

(b) For livestock grazing losses, participant must provide acceptable, verifiable, or reliable records that:

(1) Additional livestock feed was fed to sustain eligible livestock during an eligible adverse weather or loss condition, or

(2) Eligible livestock were removed from the eligible grazing land where the grazing loss occurred.

(c) For livestock, honeybee, or farm-raised fish feed losses, participant must provide acceptable, verifiable, or reliable records of the following as determined by the COC:

(1) Purchased feed intended as feed for livestock, honeybees, or farm-raised fish that was lost, or additional feed purchased above normal quantities to sustain livestock, honeybees, and farm-raised fish for a period of time, not to exceed 150 days, until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, feed receipts, invoices, settlement sheets, warehouse ledger sheets, load summaries, register tapes, and contemporaneous records.

(2) Harvested feed intended as feed for livestock, honeybees, or farm-raised fish that was lost due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, weight tickets, truck scale tickets, pick records, contemporaneous records used to verify that the crop was stored with the intent to feed the crop to livestock, honeybees, or farm-raised fish, and custom harvest documents that clearly identify the amount of feed produced from the applicable acreage.

(3) Additional cost of transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. Verifiable or reliable records may include, but are not limited to, invoices, commercial receipts, load summaries, and contemporaneous records used to verify transportation cost of additional livestock feed.

(4) Additional cost of transporting water to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records and invoices. Records must clearly indicate the dates on which water was transported and the total gallons transported.

(5) Additional cost incurred to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to an eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records, and invoices. Records must clearly indicate the dates on which livestock or feed was transported and the total mileage transported.

(d) For eligible honeybee colony, honeybee hive and farm-raised fish losses, the participant must provide verifiable or reliable records of honeybee colony, hive, or farm-raised fish losses. For honeybee colony and hive losses, the participant must also provide verifiable or reliable records of inventory at the beginning of the program year, and records of purchase and sale transactions of honeybee colonies and hives throughout the program year. If the participant was paid for a loss of honeybee colony or honeybee hive in either or both of the 2 previous years, the participant must provide documentation that FSA deems acceptable to substantiate how current year honeybee colony and honeybee hive inventory was acquired. For farm-raised fish losses, the participant must also provide verifiable or reliable records of inventory on the beginning date and ending date of the eligible adverse weather or eligible loss condition. Verifiable and reliable records may include, but are not limited to, any combination of the following:

(1) A report of acreage,

(2) Loan records,

(3) Private insurance documents,

(4) Property tax records,

(5) Sales and purchase receipts,

(6) State colony registration documentation, and

(7) Chattel inspections.

(e) If verifiable or reliable records are not available or provided, as required in paragraphs (b) through (d) of this section, the COC may accept producer's certification of losses if similar producers have comparable losses, as determined by the COC and approved by the STC (FSA State Committee).

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49466, Oct. 2, 2018; 85 FR 10964, Feb. 26, 2020; 87 FR 19786, Apr. 6, 2022]

§ 1416.107 Notice of loss and application period.

(a) In addition to submitting an application for payment by the deadline in paragraph (b) of this section, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses other than honeybees, provide a notice of loss to FSA within 30 calendar days of when the loss of livestock is first apparent;

(2) For honeybee losses, provide a notice of loss together with documentation required by § 1416.103 to FSA within 15 calendar days of when the loss is first apparent;

(3) Submit the notice of loss required in this paragraph to the FSA county office.

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant seeking payment must also submit a completed application for payment by 30 calendar days after the end of the applicable program year.

[85 FR 10965, Feb. 26, 2020]

§ 1416.108 [Reserved]

§ 1416.109 National Payment Rate.

(a) For an eligible livestock, honeybee, or farm-raised fish producer that meets the definition of beginning farmer or rancher, veteran farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher, payments calculated in §§ 1416.110 through 1416.112 will be based on a national payment rate of 90 percent.

(b) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§ 1416.110(a), (b), (f), (g) and (l), 1416.111(a), and 1416.112(a), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 60 percent and not more than 80 percent of the calculated payment.

(c) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in § 1416.11(b) and (c), and 1416.112(b), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 75 percent and not more than 80 percent of the calculated payment.

[79 FR 21097, Apr. 14, 2014, as amended at 85 FR 10965, Feb. 26, 2020]

§ 1416.110 Livestock payment calculations.

(a) Livestock feed payments for an eligible livestock producer will be calculated based on losses for no more than 150 days during the program year. Payment calculations for feed losses will be based on a national payment rate, as specified in § 1416.109, multiplied by the producer's actual cost for:

(1) Livestock feed that was purchased forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(1);

(2) Livestock feed that was mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed after harvest due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(2);

(3) The additional cost of purchasing additional livestock feed above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional livestock feed becomes available, as specified in § 1416.103(d)(3); and

(4) The additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(4).

(b) Payments for losses resulting from the additional cost of transporting water to eligible livestock due to an eligible adverse weather, eligible

loss condition, or eligible drought for no more than 150 days during the program year, as specified in §1416.103(d)(5) will be calculated based on a national payment rate, as determined in §1416.109, multiplied by the lesser of either:

(1) The total value of the cost to transport water to eligible livestock for 150 days, based on the daily water requirements for the eligible livestock, or

(2) The total value of the cost to transport water to eligible livestock for the program year, based on the actual number of gallons of water the eligible producer transported to eligible livestock for the program year.

(c) The total value of the cost to transport water to eligible livestock for 150 days to be used in the calculation for paragraph (b)(1) of this section is equal to the product obtained by multiplying:

(1) The number of eligible livestock converted to an animal unit basis;

(2) The gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator;

(3) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator; and

(4) 150 days.

(d) The total value of the cost to transport water to eligible livestock for the program year to be used in the calculation for paragraph (b)(2) of this section is equal to the product obtained by multiplying:

(1) Actual number of gallons of water transported by the eligible producer to eligible livestock in the program year; and

(2) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator.

(e) The national average price per gallon to transport water to be used in the calculation for paragraphs (c)(3) and (d)(2) of this section is $0.04, or such other price determined by the Deputy Administrator.

(f) Payments for an eligible livestock producer, for livestock losses resulting from the additional cost associated with gathering livestock to treat or inspect for cattle tick fever will be calculated for the actual number of livestock involved in each treatment or inspection. Total payments are equal to the sum of the following for each treatment or inspection:

(1) The national payment rate, as determined in §1416.109, times

(2) The number of eligible livestock treated or inspected by APHIS for cattle tick fever, times

(3) The average cost to gather livestock, per head, as established by the Deputy Administrator.

(g) Payments for an eligible livestock producer for grazing losses, except for losses due to wildfires on non-Federal land, will be calculated based on the applicable national payment rate, as determined in §1416.109, multiplied by the lesser of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 150 days of daily feed cost for all eligible livestock, or

(2) The total value of grazing lost for all eligible livestock based on the normal carrying capacity, as determined by the Secretary, of the eligible grazing land of the eligible livestock producer for the number of grazing days lost, not to exceed 150 days of lost grazing.

(h) The total value of feed cost to be used in the calculation for paragraph (g)(1) of this section is based on the number of days grazing was lost and equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent, as determined in paragraph (i) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of all eligible livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(i) The feed grain equivalent to be used in the calculation for paragraph (g)(1) of this section equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day, or

(2) Any other type or weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(j) The corn price per pound to be used in the calculation for paragraph (h)(2) of this section equals the quotient calculated as follows:

(1) The higher of:

(i) The national average corn price per bushel of corn for the 12-month period immediately preceding March 1 of the program year for which payments are calculated; or

(ii) The national average corn price per bushel of corn for the 24-month period immediately preceding March 1 of the program year for which payments are calculated;

(2) Divided by 56.

(k) The total value of grazing lost to be used in the calculation for paragraph (h)(2) of this section equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of an eligible adverse weather or eligible loss condition, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; and

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land.

(l) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated based on the applicable national payment rate, as determined in § 1416.109, multiplied by:

(1) The result of dividing:

(i) The number of acres of grazing land or pastureland acres affected by the fire, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; times

(2) The daily value of grazing as calculated by FSA under this section; times

(3) The number of days grazing was lost due to fire, not to exceed 180 calendar days;

(m) If a participant, during the normal grazing period for the eligible grazing land, claims both an eligible loss resulting from the additional cost of purchasing additional livestock feed above normal quantities, as calculated in paragraph (a)(3) of this section, and an eligible grazing loss, as calculated in paragraphs (g) or (l) of this section, then the participant may receive no more than the larger of the value of the loss resulting from the:

(1) Additional cost of purchasing additional livestock feed, as calculated in paragraph (a)(3) of this section; or

(2) Grazing loss, as determined in:

(i) Paragraph (g) of this section, for losses due to an eligible adverse weather or eligible loss condition, except wildfires on non-Federal lands, or

(ii) Paragraph (l) of this section, for losses due to wildfires on non-Federal lands.

(n) Payments for losses resulting from the additional cost of transporting eligible livestock to feed or livestock feed to eligible livestock, for additional mileage above normal, in excess of 25 miles per truckload and for no more than 1,000 miles per truckload of livestock or livestock feed during the program year, as specified in § 1416.103(d)(6) will be calculated based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) The national average price per mile to transport a truckload of livestock or livestock feed; and

(2) The actual number of additional miles above normal to transport livestock or livestock feed by an eligible producer, in excess of 25 miles per truckload of livestock or feed and for no more than 1,000 miles per truckload of livestock or feed during the program year.

(o) The national average price per mile to transport a truckload of livestock or feed to be used in the calculation for paragraph (n)(1) of this section is determined by the Deputy Administrator for each program year using a national cost formula developed by FSA based on the cost of hauling feed or livestock above normal mileage, not to include the first 25 miles. The national average price per mile considers the average cost for hauling a truckload of forage or livestock from sources 200 miles away. The Deputy Administrator may determine a different price per mile for a particular state, if the Deputy Administrator determines that a different price is necessary due to differences in state hauling costs compared to national average costs. The original physical location of the livestock will determine the applicable state for payment purposes.

(p) Payments for losses resulting from costs associated with treating livestock feed transported above normal to prevent the spread of invasive pests, as specified in §1416.103(d)(6), will be calculated based on a national payment rate, as determined in §1416.109, multiplied by the producer's actual cost for controlling invasive pests in livestock feed transported above normal.

(q) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

[79 FR 21097, Apr. 14, 2014, as amended at 85 FR 10965, Feb, 26, 2020; 87 FR 19786, Apr. 6, 2022]

§1416.111 Honeybee payment calculations.

(a) An eligible honeybee producer may receive payments for eligible honeybee feed losses, as specified in §1416.103(h), based on a national payment rate, as determined in §1416.109, multiplied by the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in §1416.103(h)(1); and

(2) Purchased, above normal, to maintain the honeybees during an eligible adverse weather or eligible loss condition until additional honeybee feed becomes available, as specified in §1416.103(h)(2);

(b) An eligible honeybee producer may receive payments for eligible honeybee colony losses, as specified in §1416.103(i), based on a national payment rate, as determined in §1416.109(b), multiplied by:

(1) Average fair market value of the honeybee colonies as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for eligible honeybee hive losses, as specified in §1416.103(i), based on a national payment rate, as determined in §1416.109, multiplied by:

(1) Average fair market value for honeybee hives as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§1416.112 Farm-raised fish payment calculations.

(a) An eligible farm-raised fish producer may receive payments for fish feed losses due to an eligible adverse weather or eligible loss condition, as specified in §1416.103(h), based on a national payment rate, as determined in §1416.109, multiplied by the producer's actual cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss

condition, as specified in §1416.103(h)(1); and

(2) Purchased, above normal, to maintain the farm-raised fish during an eligible adverse weather or eligible loss condition until additional farm-raised fish feed becomes available, as specified in §1416.103(h)(2).

(b) An eligible producer of farm-raised fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as specified in §1416.103(j), based on a national payment rate, as determined in §1416.109, multiplied by:

(1) Average fair market value of the bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a result of an eligible adverse weather or loss condition, in excess of normal mortality, as determined by the Deputy Administrator.

(c) Payments calculated in this section or elsewhere with respect to ELAP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income limitations that are contained in part 1400 of this chapter.

Subpart C—Livestock Forage Disaster Program

§1416.201 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Forage Disaster Program (LFP) will be administered.

(b) Eligible livestock owners or contract growers who are eligible producers of eligible grazed forage crop acreage will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs in the calendar year for which benefits are being requested.

[79 FR 21097, Apr. 14, 2014, as amended at 85 FR 10965, Feb. 26, 2020]

§1416.202 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred beefalo heifer is also considered an adult beefalo cow if it was pregnant by the beginning date of the qualifying drought or fire.

Adult buffalo or bison bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant by the beginning date of the qualifying drought or fire.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows on or before the beginning date of a qualifying drought or fire.

Adult dairy cow means a female dairy breed bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Agricultural operation means a farming operation.

Application means the ''Livestock Forage Disaster Program'' form.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible livestock producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Contract grower means a person or legal entity, other than a feedlot, that was engaged in a farming operation not as an owner of covered livestock but in a business whose income is dependent on either the actual weight gain of the livestock or number of offspring produced from the livestock.

Covered livestock means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire, the eligible livestock producer owned, leased, purchased, entered into a contract to purchase, was a contract grower of, or sold or otherwise disposed of due to a qualifying drought during the current production year. It includes livestock that the producer otherwise disposed of due to drought in one or both of the two production years immediately preceding the current production year as determined by the Secretary. Notwithstanding the foregoing portions of this definition, covered livestock will not include livestock in feedlots.

Equine animal means a weaned domesticated horse, mule, or donkey.

Farming operation means a business enterprise engaged in producing agricultural products.

Federal Agency means, with respect to the control of grazing land, an agency of the federal government that manages rangeland on which livestock is generally permitted to graze. For the purposes of this section, it includes, but is not limited to, the U.S. Department of the Interior (DOI), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and USDA Forest Service (FS).

Goat means a weaned domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

Grazing animals mean those species of weaned livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are present on grazing land or pastureland. Unweaned livestock are excluded as grazing animals regardless of whether those unweaned livestock are present on grazing land or pastureland.

Non-adult beef cattle means a weaned beef breed bovine animal that on or before the beginning date of a qualifying drought or fire does not meet the definition of adult beef cow or bull.

Non-adult beefalo means a weaned hybrid of beef and bison that on or before the beginning date of the qualifying drought or fire does not meet the definition of adult beefalo cow or bull.

Non-adult buffalo or bison means a weaned animal of those breeds that on or before the beginning date of beginning date of the qualifying drought or fire does not meet the definition of adult buffalo or bison cow or bull.

Non-adult dairy cattle means a weaned bovine animal, of a breed used for the purpose of providing milk for human consumption, that on or before the beginning date of a qualifying drought or fire does not meet the definition of adult dairy cow or bull.

Normal carrying capacity means, with respect to each type of grazing land or pastureland in a county, the normal carrying capacity that would be expected from the grazing land or pastureland for livestock during the

normal grazing period in the county, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

Owner means one who had legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning of a qualifying drought or fire.

Sheep means a weaned domesticated, ruminant mammal of the genus *Ovis*.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at *http://droughtmonitor.unl.edu*.

Unweaned livestock means an animal not weaned from mother's milk or milk replacement to other nourishment.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49466, Oct. 2, 2018; 85 FR 10965, Feb. 26, 2020]

§ 1416.203 Eligibility.

(a) In addition to meeting all other requirements, to be eligible for benefits under this subpart, an individual or legal entity with an eligible producer interest in grazing land acreage who is either an owner or contract grower of grazing animals, must:

(1) During the 60 days prior to the beginning date of a qualifying drought or fire, own, cash or share lease, or be a contract grower of covered livestock.

(2) As of the date of the qualifying drought or fire provide pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land, that is:

(i) Physically located in a county affected by a qualifying drought during the normal grazing period for the specific forage crop acreage in the county, or

(ii) Rangeland managed by a Federal agency for which the otherwise eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock due to a qualifying fire.

(b) The eligible livestock producer must have certified that the livestock producer has suffered a grazing loss due to a qualifying drought or fire to be eligible for LFP payments.

(c) An eligible livestock producer does not include any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis. (That is, where the lease or rental agreement calls for payment based in whole or in part on the amount of weight gained by the animals that use the pastureland or grazing land.)

(d) A producer seeking payment must not be prohibited from receiving these benefits as a result of the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

(e) If a contract grower is an eligible livestock producer for covered livestock, the owner of that livestock is not eligible for payment.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49467, Oct. 2, 2018; 85 FR 10965, Feb. 26, 2020]

§ 1416.204 Covered livestock.

(a) To be considered covered livestock for LFP payments, livestock must meet all the following conditions:

(1) Be grazing animals such as adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, ostriches, reindeer, or sheep;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland:

(i) During the normal grazing period for the specific type of grazing land or pastureland for the county during the qualifying drought; or

(ii) When the Federal agency prohibited the eligible livestock producer from using the managed rangeland for grazing due to a fire;

(3) Be livestock that the eligible livestock producer:

(i) During the 60 days prior to the beginning date of a qualifying drought or fire:

(A) Owned,

(B) Leased,

(C) Purchased,

(D) Entered into a contract to purchase, or

(E) Was a contract grower of; or

(ii) Sold or otherwise disposed of due to qualifying drought during:

(A) The current production year, or

(B) 1 or both of the 2 production years immediately preceding the current production year;

(4) Been livestock produced or maintained for commercial use or be livestock that is produced and maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the qualifying drought or fire;

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to:

(i) Any uses of wild free roaming livestock;

(ii) Racing or wagering;

(iii) Hunting; and

(iv) Consumption by owner; and

(6) Not have been livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(b) The covered livestock categories are:

(1) Adult beef cows or bulls,

(2) Adult beefalo cows or bulls,

(3) Adult buffalo or bison cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emu,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult beefalo,

(13) Non-adult buffalo or bison,

(14) Non-adult dairy cattle,

(15) Ostriches,

(16) Reindeer, and

(17) Sheep.

(c) Livestock that are not covered include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary;

(2) Animals that are not grazing animals;

(3) Yaks;

(4) Poultry;

(5) Swine;

(6) Unweaned livestock or animals not meeting the definition of a grazing animal;

(7) Any wild free roaming livestock, including horses and deer; and

(8) Livestock produced or maintained for reasons other than commercial use, including, but not limited to, livestock produced or maintained for racing or wagering purposes, hunting, or consumption by owner.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49467, Oct. 2, 2018; 85 FR 10965, Feb. 26, 2020; 88 FR 1891, Jan. 11, 2023]

§ 1416.205 Eligible grazing losses.

(a) A grazing loss due to drought is eligible for LFP only if the grazing loss for the covered livestock occurs on land that:

(1) Is native or improved pastureland with permanent vegetative cover, or

(2) Is planted to a crop planted specifically for the purpose of providing grazing for covered livestock, as reported on the producer's acreage report, including crops such as forage sorghum, small grains, annual planted ryegrass, or annual planted crabgrass, but not including corn stalks or grain sorghum stalks; and

(3) Is grazing land or pastureland that is owned or leased by the eligible livestock producer that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for

the county, rated by the U.S. Drought Monitor as having a:

(i) D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary, or

(ii) D3 (extreme drought) or D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary. (As specified elsewhere in this subpart, the amount of potential payment eligibility will be higher than under paragraph (a)(3)(i) of this section where the D4 trigger applies or where the D3 condition as determined by the Secretary lasts at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.)

(b) A grazing loss is not eligible for LFP if:

(1) The grazing loss due to drought on land used for haying or grazing under the Conservation Reserve Program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3835a), or

(2) The grazing loss occurs on irrigated land, unless the irrigated land has not been irrigated in the program year for which benefits are being requested due to the lack of surface wateras a result of a qualifying eligible drought condition.

(c) A grazing loss due to fire qualifies for LFP only if:

(1) The grazing loss occurs on rangeland that is managed by a Federal agency and

(2) The eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49467, Oct. 2, 2018; 85 FR 10966, Feb. 26, 2020]

§ 1416.206 Application for payment.

(a) To apply for LFP, the participant that suffered eligible grazing losses for the 2019 and subsequent program years must submit a completed application and required supporting documentation, including some supporting documentation such as an acreage report that may have been required at an earlier date, to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

(b) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss;

(2) Evidence that grazing land or pastureland is owned or leased;

(3) A report of acreage according to part 718 of this title for the grazing lands incurring losses for which assistance is being requested under this subpart;

(4) Adequate proof, as determined by FSA that the grazing loss:

(i) Was for the covered livestock;

(ii) If the loss of grazing occurred as the result of a fire, that the:

(A) Loss was due to a fire, and

(B) Participant was prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire; and

(iii) Occurred in the program year for which payments are being requested;

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(6) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: Verifiable purchase and sales records; grower contracts; veterinarian records; bank or other loan papers; written contracts; production records; private insurance documents; sales records; and similar documents determined acceptable to FSA.

(c) [Reserved]

(d) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data

is voluntary; however, without all required data, program benefits will not be approved or provided.

[79 FR 21097, Apr. 14, 2014. Redesignated and amended at 83 FR 49467, Oct. 2, 2018; 85 FR 10966, Feb. 26, 2020]

§ 1416.207 Payment calculation.

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in §1416.205(a), calculated as specified in paragraphs (f) or (h) of this section. Total LFP payments to an eligible livestock producer in a calendar year for grazing losses due to qualifying drought will not exceed 5 monthly payments for the same livestock. Payments calculated in this section or elsewhere with respect to LFP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income provisions that are contained in subpart A of this part. Payment may only be made to the extent that eligibility is specifically provided for in this subpart. Hence, with respect to drought, payments will be made only as representative to a ''1-month'' payment, a ''3-month'' payment, ''4-month'' payment, or a ''5-month'' payment based on the provisions of paragraphs (b) through (e) of this section.

(b) To be eligible to receive a 1-month payment, that is a payment equal to the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D2 severe drought (intensity) in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland in the county.

(c) To be eligible to receive a 3-month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(d) To be eligible to receive a 4-month payment, that is a payment equal to four times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(e) To be eligible to receive a 5-month payment, that is a payment equal to five times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D4 (exceptional drought) in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county.

(f) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as specified in paragraph (h) of this section, will be equal to 60 percent of the lesser of:

(1) The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined in paragraph (i) of this section, or

(2) The monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer, as determined in paragraph (l) of this section.

(g) An eligible livestock producer cannot receive more than a 5-month

payment for the same covered livestock during the calendar year regardless of the number of drought intensity ratings the county receives; that is, the maximum payment an eligible livestock producer may receive under LFP in a calendar year cannot exceed 60 percent of 5 times the same covered livestock's monthly feed cost.

(h) In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to a qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly payment rate calculated in paragraph (f) of this section.

(i) The monthly feed cost for covered livestock equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the amount of the ''feed grain equivalent'', as determined under paragraph (j) of this section; and

(3) A payment rate equal to the corn price per pound, as determined in paragraph (k) of this section.

(j) The feed grain equivalent equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) In the case of any other type or weight of covered livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(k) The corn price per pound equals the quotient calculated as follows:

(1) The higher of:

(i) The national average corn price per bushel for the 12-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated, or

(ii) The national average corn price per bushel for the 24-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated,

(2) Divided by 56.

(l) The monthly feed cost using the normal carrying capacity of the eligible grazing land equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(3) A payment rate equal to the corn price per pound, as determined in paragraph (k) of this section; and

(4) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of a drought or fire, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland as determined under this subpart.

(m) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in § 1416.205(c):

(1) For the period:

(i) Beginning on the date on which the Federal Agency prohibits the eligible livestock producer from using the managed rangeland for grazing, and

(ii) Ending on the earlier of the last day of the Federal lease of the eligible livestock producer or the day that would make the period a 180 day period.

(2) For grazing losses that occur on not more than 180 days per calendar year.

(3) For 50 percent of the monthly feed cost, as determined under paragraph (i) of this section, pro-rated to a daily rate, for the total number of livestock covered by the Federal lease of the eligible livestock producer.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49468, Oct. 2, 2018; 85 FR 10966, Feb. 26, 2020]

Subpart D—Livestock Indemnity Program

§ 1416.301 Applicability.

(a) This subpart establishes the terms and conditions of the Livestock Indemnity Program (LIP).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.306 for eligible livestock deaths in excess of normal

mortality, or livestock owners will be compensated for sales of injured livestock for a reduced price, if either the death or injury that results in sale at a reduced price occurred as a direct result of an eligible cause of loss. The eligible cause of loss is one, as determined by FSA, that directly results in the death of livestock or injury and sale of livestock at a reduced price, despite the livestock owner's or contract grower's performance of expected and normal preventative or corrective measures and acceptable animal husbandry practices.

[83 FR 49468, Oct. 2, 2018, as amended at 85 FR 10966, Feb. 26, 2020]

§ 1416.302 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Acceptable animal husbandry means animals raised and cared for to produce offspring, meat, fiber, milk, eggs, or other products. Includes day-to-day care and selective breeding and raising of livestock. The practices are those that are generally recognized by the commercial livestock industry.

Actual livestock beginning inventory means the actual livestock beginning inventory per calendar year for unweaned livestock that is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales.

Adjusted livestock beginning inventory means the LBIH for unweaned livestock that will be adjusted during the base period for years for which continuous actual LBIH records are not provided.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died or was sold at a reduced price.

Adult beefalo bull means a male hybrid of beef and bison that was at least 2 years old and used for breeding purposes.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before dying or being injured and sold at a reduced price. A first-time bred beefalo heifer is also considered an adult beefalo cow if it is pregnant at the time it died or was sold at a reduced price.

Adult buffalo or bison bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before it died or was injured and sold at a reduced price. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant at the time it died or was sold at a reduced price.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died or was injured and sold at a reduced price.

Agricultural operation means a farming operation.

Application means the ''Livestock Indemnity Program'' form.

Approved livestock beginning inventory means the approved livestock beginning inventory for unweaned livestock, calculated by the sum of the yearly actual and transitional LBIH divided by the number of years of LBIH.

Base period means the five consecutive calendar years immediately preceding the calendar year of the LIP application for which the approved livestock beginning inventory is being established for the unweaned livestock.

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

Buck means a male goat.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit.

Continuous livestock beginning inventory reports means livestock beginning inventory reports submitted by a producer for each calendar year that the producer was involved in the unweaned livestock

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Cow, Ewe, Nanny LBIH means, the applicable calendar year cow, ewe, or nanny verifiable livestock beginning inventory records provided to FSA by the unweaned livestock operation to be used in calculating the transitional LBIH.

Eligible adverse weather event means extreme and abnormal damaging weather in the calendar year for which benefits are being requested that is not expected to occur during the loss period for which it occurred, which directly results in eligible livestock death losses in excess of normal mortality or injury and sale of livestock at a reduced price. Eligible adverse weather events include, but are not limited to, as determined by the Deputy Administrator or designee, earthquake; hail; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm meets the definition provided in this section; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and straight-line wind. Drought is not an eligible adverse weather event except when associated with anthrax, a condition that occurs because of drought and results in the death of eligible livestock.

Eligible attack means an attack by animals reintroduced into the wild by the Federal government or protected by Federal law, including wolves and avian predators, that directly results in the death of eligible livestock in excess of normal mortality or injury and sale of eligible livestock at reduced price. Eligible livestock owners or contract growers are responsible for showing to FSA's satisfaction that eligible attacks are substantiated according to §1416.305 in order to be considered eligible for payment.

Eligible disease means a disease that, as determined by the Deputy Administrator, is exacerbated by an eligible adverse weather event that directly results in the death of eligible livestock in excess of normal mortality, including, but not limited to anthrax, cyanobacteria, and larkspur poisoning, or a disease that is caused or transmitted by a vector and cannot be controlled by vaccination or acceptable management practices. Eligible diseases are not an eligible cause of loss for benefits based on injury and sales of eligible livestock at reduced price.

Eligible loss condition means any of the following that occur in the calendar year for which benefits are requested: Eligible adverse weather event, eligible attack, and eligible disease. Eligible disease is not an eligible loss condition for injured livestock.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

FSA means the Farm Service Agency.

Goat means a domesticated, ruminant mammal of the genus Capra, including Angora goats. Goats are further defined by sex (bucks and nannies) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock beginning inventory history (LBIH) means a minimum of four, up to a maximum of five, calendar years of actual and transitional beginning inventory records used to calculate the approved livestock beginning inventory history for a livestock operation.

LBIH reporting date means the LBIH reporting date for which the reports will be accepted for inclusion in the base period for the current calendar year.

Livestock inventory report means a written record showing the producer's annual inventory used to determine the LBIH for LIP purposes for the livestock operation. The report contains

LBIH by livestock operation by livestock type or kind.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died or were sold at a reduced sale price.

Livestock unit means all eligible livestock in the physical location county where the livestock losses occurred for the program year:

(1) In which a person or legal entity has 100 percent share interest; or

(2) Which is owned individually by more than one person or legal entity on a shared basis.

Nanny means a female goat.

Newborn livestock means livestock that are within 10 calendar days of date of birth.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. Non-adult beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Non-adult buffalo or bison means an animal of those breeds that does not meet the definition of adult buffalo or bison cow or bull. Non-adult buffalo or bison are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Non-adult dairy cattle means a dairy breed bovine animal, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Normal mortality means the numerical amount, computed by a percentage, as established for the area by the FSA State Committee, of expected livestock deaths, by category, that normally occur during a calendar year for a producer.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Sheep means a domesticated, ruminant mammal of the genus Ovis. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

State office or county office means the respective FSA office.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated by sex and weight as determined by FSA.

Transitional LBIH for unweaned livestock means an estimated LBIH, generally determined by multiplying the livestock operation's beginning cow, ewe, or nanny LBIH by the national established birthing rate percentage established by FSA for the species of unweaned livestock. The Deputy Administrator has the authority to make adjustments for variations in stocking levels for livestock during the period covered by the history as necessary. It is to be used in the transitional LBIH calculation process when less than 4 consecutive calendar years of actual LBIH is available.

Unweaned livestock means an animal not weaned from mother's milk or milk replacement to other nourishment. For LIP purposes, unweaned livestock does not include turkeys, ducks, chickens, and geese.

Winter storm means, for an eligible adverse weather event, an event that so severe as to directly cause injury to livestock and lasts in duration for at least 3 consecutive days and includes a combination of high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures. For a determination of winter storm, the wind, precipitation, and extremely cold temperatures must occur with the 3-day period, with wind and extremely cold

temperatures occurring in each of the 3 days.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49468, Oct. 2, 2018; 85 FR 10966, Feb. 26, 2020]

EDITORIAL NOTE: At 85 FR 10966, Feb. 26, 2020, §1416.302 was amended in the definition ''eligible adverse weather'' however, the amendment to remove the last three sentences could not be incorporated due to inaccurate amendatory instruction.

§ 1416.303 Eligible owners and contract growers.

(a) In addition, to other eligibility rules that may apply, to be eligible as a:

(1) Livestock owner for benefits with respect to the death of an animal or sale of an injured animal at a reduced price under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died or was injured and sold at a reduced price and under conditions in which no contract grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in §1416.304(a).

(2) Contract grower for benefits with respect to the death of an animal, the animal must be in one of the categories specified on §1416.304(b), and the contract grower must have had,

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(b) A livestock owner or contract grower seeking payment must be an eligible producer as defined in subpart A of this part and other applicable USDA regulations.

(c) All of an eligible livestock owner's or contract grower's interest in livestock in a physical location county must be taken into account and summarized by livestock unit when determining the extent of payment eligibility.

(d) Livestock owners are eligible for benefits for injured animals sold at reduced price only when those animals are not in a contract grower's inventory for which a contract grower seeks benefits for death losses. Contract growers are not eligible for benefits for injured animals sold at a reduced price.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49469, Oct. 2, 2018]

§ 1416.304 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, bison, buffalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, ostriches, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must have:

(1) Died as a direct result of an eligible loss condition:

(i) With the eligible loss condition occurring in the program year for which benefits are sought;

(ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible loss condition; or

(2) Been injured and sold at a reduced price as a direct result of an eligible adverse weather event or eligible attack no later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or eligible attack.

(3) Been produced or maintained for commercial use for livestock sale or the production of livestock products such as milk or eggs as part of a farming operation on the day they died or until the event that resulted in their sale at a reduced price; and

(4) Not be produced or maintained for reasons other than commercial use for livestock sale or for the production of livestock products such as milk or eggs. Livestock excluded from being eligible include, but are not limited to:

(i) Wild free roaming animals;

(ii) Horses and other animals used or intended to be used for racing or wagering;

(iii) Animals produced or maintained for hunting; and

(iv) Animals produced or maintained for consumption by owner.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Adult beef bulls;
(2) Adult beef cows;
(3) Adult beefalo bulls;
(4) Adult beefalo cows;
(5) Adult buffalo or bison bulls;
(6) Adult buffalo or bison cows;
(7) Adult dairy bulls;
(8) Adult dairy cows;
(9) Alpacas;
(10) Chickens, broilers, pullets (regular size);
(11) Chickens, chicks;
(12) Chickens, layers;
(13) Chickens, pullets or Cornish hens (small size);
(14) Chickens, roasters;
(15) Chickens, super roasters or parts
(16) Deer;
(17) Ducks;
(18) Ducks, ducklings;
(19) Elk;
(20) Emus;
(21) Equine;
(22) Geese, goose;
(23) Geese, gosling;
(24) Goats, bucks;
(25) Goats, nannies;
(26) Goats, kids;
(27) Llamas;
(28) Non-adult beef cattle;
(29) Non-adult beefalo;
(30) Non-adult buffalo or bison;
(31) Non-adult dairy cattle;
(32) Reindeer;
(33) Sheep, ewes;
(34) Sheep, lambs;
(35) Sheep, rams;
(36) Swine, suckling pigs, nursery pigs under 50 pounds;
(37) Swine, lightweight barrows, gilts 50 to 150 pounds;
(38) Swine, sows, boars, barrows, gilts 151 to 450 pounds;
(39) Swine, boars, sows, 450 pounds or more;
(40) Turkeys, poults;
(41) Turkeys, toms, fryers, and roasters; and
(42) Ostriches.

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Chickens, broilers, pullets (regular size);
(2) Chickens, chicks;
(3) Chickens, layers;
(4) Chickens, pullets or Cornish hens (small size);
(5) Chickens, roasters;
(6) Chickens, super roasters or parts;
(7) Ducks;
(8) Ducks, ducklings;
(9) Geese, goose;
(10) Swine, boars, sows;
(11) Swine, suckling nursery pigs;
(12) Swine, lightweight barrows, gilts 50 to 150 pounds;
(13) Swine, sows, boars, barrows, gilts 151 to 450 pounds;
(14) Swine, boars and sows 450 pounds or more;
(15) Turkeys, poults; and
(16) Turkeys, toms, fryers, and roasters.

(f) Ineligible livestock for the purpose of generating payments under this subpart include those livestock that died due to disease that is not an eligible disease; eligible livestock suffering injury due to disease or eligible disease which are sold for reduced price; and any eligible livestock that died or were injured by anything other than an eligible loss condition.

[83 FR 49469, Oct. 2, 2018, as amended at 85 FR 10966, Feb. 26, 2020; 88 FR 1891, Jan. 11, 2023]

§ 1416.305 Application process.

(a) A notice of loss must be accompanied by documentation acceptable to FSA substantiating that the claimed eligible loss condition occurred and was responsible for eligible losses. For any notice of loss being submitted for disease exacerbated by eligible adverse weather, the notice of loss must be accompanied by a certification referenced in paragraph (g) of this section.

(b) A livestock owner or contract grower that suffered livestock losses must:

(1) Provide a notice of loss, by livestock unit, to FSA by the later of 30 calendar days of when the loss of livestock is first apparent to the livestock owner or contract grower or December 3, 2018.

(2) Submit the notice of loss required in this section to the FSA county office responsible for servicing the physical location county where the loss occurred.

(c) In addition to the notice of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment, by livestock unit for losses apparent in 2019 and subsequent years, by no later than 60 calendar days after the end of the calendar year in which the eligible loss condition occurred.

(d) A participant must provide other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory,

(3) Physical location of claimed livestock at the time of death or injury,

(4) Documentation acceptable to FSA showing inventory numbers for the livestock unit and other inventory information necessary to establish actual mortality as required by FSA,

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office,

(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred,

(7) Documentation to substantiate eligible attacks obtained from a source such as, but not limited to, the following:

(i) APHIS,

(ii) State level Department of Natural Resources, or

(iii) Other sources or documentation, such as third parties, as determined by the Deputy Administrator, and

(8) If livestock are injured and sold at a reduced price.

(i) Documentation of injured livestock's gross price, and

(ii) Documentation to substantiate injury of livestock due to an eligible adverse weather event or eligible attack.

(9) The livestock producer may supplement additional documentation to support the eligible loss condition, as determined by the Deputy Administrator.

(10) In addition, contract growers must provide a copy of the grower contract.

(e) For death losses or losses resulting from injured livestock sold at a reduced price, the participant must provide adequate proof that the death or injury of the eligible livestock occurred as a direct result of an eligible loss condition, as opposed to any other possible or potential cause of loss. The quantity and kind of livestock that died as a direct result of the eligible loss condition may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA. The quantity and kind of livestock that died or has been injured and sold at a reduced price as a direct result of an eligible attack must be substantiated by documentation of confirmed kills observed by an acceptable source as specified in paragraphs (d)(7) and (g) of this section.

(f) For losses resulting from an eligible adverse weather event or eligible disease, if adequate verifiable proof of death or injury documentation is not available, the participant may provide reliable records as proof of death or injury. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(g) For livestock death losses due to disease, a licensed veterinarian's certification of livestock deaths may be

accepted as proof of death, if the livestock are not owned by the licensed veterinarian and reliable beginning inventory data is available, only if the veterinarian provides a written statement containing all of the following:

(1) Veterinarian's personal observation of the animals and knowledge of how the deaths of the livestock were because of disease caused or exacerbated by an eligible adverse weather event;

(2) Livestock deaths were not otherwise avoidable and preventable using good animal husbandry and management protocols and practices by the livestock producer; and

(3) Other information required by FSA to determine the certification acceptable.

(4) Information furnished by the participant and the veterinarian will be used to determine eligibility for program benefits. Furnishing the information is voluntary; however, without all required information program benefits will not be approved or provided

(h) Certification of livestock deaths or injuries by third parties may be accepted if both of the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category identified in this subpart and by FSA were in inventory at the time the eligible adverse weather event occurred;

(iii) The physical location of the livestock, by category, in inventory when the deaths occurred; and

(iv) Other details required for FSA to determine the certification acceptable; and

(2) The third party is an independent source who is not affiliated with the farming operation such as a hired hand and is not a ''family member,'' defined as a person whom a member in the farming operation or their spouse is related as lineal ancestor, lineal descendant, sibling, spouse, and provides their telephone number, address, and a written statement containing specific details about:

(i) Their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower including, but not limited to, the number and kind or type of the participant's livestock that died because of the eligible adverse weather event; and

(iv) Other information required by FSA to determine the certification acceptable.

(v) Data furnished by the participant and the third party will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(i) Unweaned livestock operations may provide proof of death by using the LBIH.

(1) Livestock inventory reports by livestock unit must be provided to the FSA local county office by 60 calendar days after the end of the calendar year of the eligible adverse weather event. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

(i) Livestock inventory reports must provide an accurate account of livestock beginning inventory for the livestock type or kind and must be supported by written records such as but not limited to: Docking records, sales receipts, shearing records, shipping records, bank records, veterinarian records, IRS records, or other records approved by COC. For purposes of determining beginning livestock inventory, livestock inventory reports may require adjustment by COC, not to exceed normal mortality, for when loss occurs at different points during the growing season (for example, inventories from docking may need little to no adjustment, but sales records at the end of the growing season may require an adjustment to account for a full years of normal mortality).

(ii) The unweaned livestock operation must certify to the accuracy of the information.

(2) The unweaned livestock operation is solely responsible for the timely submission and certification of accurate, complete livestock beginning inventory to the county FSA office. Livestock beginning inventory records must be provided for all livestock type or kind.

(i) Records may be requested by the applicable COC or STC, on behalf of FSA. The unweaned livestock operation must provide such records upon request.

(ii) The COC will explain the procedure for the LBIH to unweaned livestock operation. COC will determine the LBIH in accordance with § 1416.305(g).

(iii) COC will determine if the livestock beginning inventory records are acceptable and calculate the approved livestock beginning inventory history.

(3) The LBIH is calculated utilizing a minimum of 4 years of data and will be updated each subsequent inventory year. The transitional LBIH may contain a maximum of the 4 most recent calendar years and may include actual and transitional livestock beginning inventories. Transitional LBIH will only be used when less than 4 years of actual records are available. Appropriate adjustments to LBIH may be made to account for variations in ewe, cow and nanny stocking levels during the period covered by the history.

(4) The unweaned livestock operation is required to provide beginning livestock inventory records to determine the LBIH, if livestock beginning inventory records are available.

(i) If no acceptable livestock beginning inventory records are available for calves, lambs, or kids, calculate the 4 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 65 percent.

(ii) If acceptable livestock beginning inventory records are provided for only one of the most recent 5 calendar years, calculate the 3 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 80 percent.

(iii) If acceptable livestock beginning inventory records are provided for only 2 of the most recent 5 calendar years, calculate the 2 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 90 percent.

(iv) If acceptable livestock beginning inventory records are provided for only 3 of the most recent 5 calendar years, calculate the one transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 100 percent.

(v) If acceptable livestock beginning inventory history records containing information for 4 or more of the most recent calendar years are provided, calculate the livestock beginning inventory history by taking a simple average of the actual livestock beginning inventory histories.

(j) When an eligible owner claims eligible livestock were injured by an eligible loss condition and were sold for a reduced price, the owner must provide verifiable evidence of the gross sale price of the livestock. The injured livestock must be sold through an independent third party (sale barn, slaughter facility, or rendering facility). Only verifiable proof of sale with price is acceptable. The gross sale price of the livestock is the amount received for the injured livestock before any reductions, such as sale yard fees. The owner must provide verifiable evidence of livestock sold at a reduced price. Documents that may satisfy this requirement include but are not limited to, any or a combination of the following: Sales receipt from a livestock auction, sale barn, or other similar livestock sales facility; bona-fide commercial sales receipts; private insurance documents; and processing plant receipts.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49470, Oct. 2, 2018; 85 FR 10967, Feb. 26, 2020; 88 FR 1891, Jan. 11, 2023]

§ 1416.306 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for death losses are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible loss condition. Normal mortality for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

(b) The LIP national payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock. The rate that applies is based on the type, class, and weight of the animal at the time of the eligible loss condition and death.

(d) The LIP payment calculated for eligible livestock contract growers will be reduced by the amount the participant received from the party who contracted with the producer to raise the livestock for the loss of income from the dead livestock.

(e) Payments to livestock owners for losses due to sale of livestock at a reduced price because of injury from an eligible loss condition are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock sold at a reduced price as a result of an eligible loss condition, minus the gross amount the eligible livestock owner received for the livestock up to the applicable national payment rate. In the event livestock sells for a reduced price that is in excess of the national payment rate, the national payment rate will be subtracted resulting in no payment for that livestock.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49471, Oct. 2, 2018]

Subpart E—Tree Assistance Program

§ 1416.400 Applicability.

(a) This subpart establishes the terms and conditions under which the Tree Assistance Program (TAP) will be administered under Title I of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill), as amended.

(b) Eligible orchardists and nursery tree growers will be compensated as specified in § 1416.406 for eligible tree, bush, and vine losses in excess of 15 percent mortality, or, where applicable, damage in excess of 15 percent, adjusted for normal mortality and normal damage, that occurred in the calendar year (or loss period in the case of plant disease) for which benefits are being requested and as a direct result of a natural disaster.

(c) Eligible pecan tree losses incurred in the 2017 and 2018 calendar years not meeting the mortality loss threshold of paragraph (b) of this section with a tree mortality loss in excess of 7.5 percent (adjusted for normal mortality) will be compensated for eligible losses as specified in § 1416.406. For 2017 calendar year losses, up to a maximum of $15,000,000 is available.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49471, Oct. 2, 2018; 84 FR 48537, Sept. 13, 2019; 85 FR 10968, Feb. 26, 2020]

§ 1416.401 Administration.

The program will be administered as specified in § 1416.2 and in this subpart.

§ 1416.402 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Bush means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush. The definition does not cover plants that produce

a bush after the normal crop is harvested such as asparagus.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Commercially viable means an eligible tree, bush, or vine, though damaged, that can rejuvenate and return to an acceptable level of commercial production at some time with rehabilitation and without replanting. A commercially viable tree, bush, or vine, regardless of the extent of damage or years of reduced production, is always excluded and never included as part of mortality under § 1416.403.

County office means the FSA or U.S. Department of Agriculture (USDA) Service Center that is responsible for servicing the farm on which the trees, bushes, or vines are located.

Cutting means a piece of a vine which was planted in the ground to propagate a new vine for the commercial production of fruit, such as grapes, kiwi fruit, passion fruit, or similar fruit.

Eligible nursery tree grower means a person or legal entity that produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale.

Eligible orchardist means a person or legal entity that produces annual crops from trees, bushes, or vines for commercial purposes.

FSA means the Farm Service Agency.

Lost means, with respect to the extent of damage to a tree or other plant, that the plant is destroyed or the damage is such that it would, as determined by FSA, be more cost effective to replace the tree or other plant than to leave it in its deteriorated, low-producing state.

Natural disaster means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence. Each of these types of disasters must be extreme, abnormal, and damaging as well as of significant magnitude or severity, as determined by the Deputy Administrator.

Normal damage means the percentage, as established for the area by the FSA State Committee, of trees, bushes, or vines in the stand that would normally be damaged during a calendar year for a producer.

Normal mortality means percentage, as established for the area by the FSA State Committee, of expected lost trees, bushes, or vines in the stand that normally occurs during a calendar year for a producer. This term refers to the number of whole trees, bushes, or vines that are destroyed or damaged beyond rehabilitation. Mortality does not include partial damage such as lost tree limbs.

Seedling means an immature tree, bush, or vine that was planted in the ground or other growing medium to grow a new tree, bush, or vine for commercial purposes.

Stand means a contiguous acreage of the same type of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial purposes, such as a maple tree for syrup, papaya tree, or orchard tree. Trees used for pulp or timber are not considered eligible trees under this subpart.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Perennials that are normally propagated as annuals such as tomato plants, biennials such as the plants that produce strawberries, and annuals such as pumpkins, squash, cucumbers, watermelon, and other melons, are excluded from the term vine in this subpart.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49471, Oct. 2, 2018; 85 FR 10968, Feb. 26, 2020]

§ 1416.403 Eligible losses.

(a) To qualify for any assistance under this subpart, except for assistance under § 1416.400(c), the eligible orchardist or nursery tree grower must first have suffered more than a 15 percent tree, bush, or vine mortality loss on a stand (adjusted for normal mortality) as a result of natural disaster as determined by the Deputy Administrator. For assistance for losses to

pecan trees under §1416.400(c), the eligible orchardist or nursery tree grower must first have suffered a mortality loss of more than 7.5 percent (adjusted for normal mortality) on a stand as a result of natural disaster as determined by the Deputy Administrator.

(b) The qualifying loss of a stand of trees, bushes, or vines specified in paragraph (a) of this section will be determined based on:

(1) Each eligible disaster event, except for losses due to plant disease;

(2) For plant disease, the time period, as determined by the Deputy Administrator, for which the stand is infected.

(c) Mortality or damage loss not eligible for inclusion as a qualifying loss under this section or for payment under §1416.406 includes those losses where:

(1) The loss or damage could have been prevented through reasonable and available measures; and

(2) The trees, bushes, or vines, in the absence of a natural disaster, would normally have required rehabilitation or replanting within the 12-month period following the loss.

(d) The damage or loss must be visible and obvious to the county committee representative. If the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(e) The county committee may require information from a qualified expert, as determined by the county committee, to determine extent of loss in the case of plant disease or insect infestation.

(f) The Deputy Administrator will determine the types of trees, bushes, and vines that are eligible.

(g) A stand that did not suffer a qualifying mortality loss as specified in paragraph (a) of this section is not eligible for payment.The qualifying mortality loss will be determined based on the eligible trees, bushes, or vines that reached mortality, which means that the tree, bush, or vine died, above and below ground, as a result of an eligible natural disaster event. If an eligible tree, bush, or vine is damaged to such an extent that it is not commercially viable, now or at any time in the future, the tree, bush, or vine can be considered dead in determining if the requisite qualifying mortality loss threshold in paragraph (a) of this section is reached.

[83 FR 49471, Oct. 2, 2018, as amended at 85 FR 10968, Feb. 26, 2020]

§1416.404 Eligible orchardists and nursery tree growers.

(a) Once the requisite qualifying eligible mortality loss is determined according to §1416.403, to be eligible for TAP payments, the eligible orchardist or nursery tree grower must:

(1) Have planted, or be considered to have planted (by purchase prior to the loss of existing stock planted for commercial purposes) trees, bushes, or vines for commercial purposes, or have a production history, for commercial purposes, of planted or existing trees, bushes, or vines;

(2) Have suffered eligible losses of eligible trees, bushes, or vines, as a result of a natural disaster or related condition;

(3) Have continuously owned the stand from the time of the disaster until the time that the TAP application is submitted.

(b) A new owner of an orchard or nursery who does not meet the requirements of paragraph (a) of this section may receive TAP payments approved for the previous owner of the orchard or nursery and not paid to the previous owner, if the previous owner of the orchard or nursery agrees to the succession in writing and if the new owner:

(1) Acquires ownership of trees, bushes, or vines for which benefits have been approved;

(2) Agrees to complete all approved practices that the original owner has not completed; and

(3) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(c) A producer seeking payment must not be ineligible under the restrictions applicable to citizenship and foreign corporations contained in §1416.3(b) and must meet all other requirements of subpart A of this part.

(d) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for payment under this subpart.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49472, Oct. 2, 2018; 85 FR 10968, Feb. 26, 2020]

§ 1416.405 Application.

(a) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses must provide an application for payment and supporting documentation to FSA or within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

(b) The producer must submit the application for payment within the time specified in paragraph (a) of this section to the FSA administrative county office that maintains the producer's farm records for the agricultural operation.

(c) A complete application includes all of the following:

(1) A completed application form provided by FSA;

(2) An acreage report for the farming operation as specified in part 718, subpart B, of this title;

(3) Subject to verification and a loss amount determined appropriate by the county committee, a written estimate of the number of trees, bushes, or vines lost or damaged that is certified by the producer or a qualified expert, including the number of acres on which the loss occurred;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred; and

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office.

(d) Before requests for payment will be approved, the county committee:

(1) Must make an eligibility determination based on a complete application for assistance;

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and the trees, bushes, or vines;

(3) May request additional information and may consider all relevant information in making its determination; and

(4) Must verify actual costs to complete the practices, as documented by the producer.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49472, Oct. 2, 2018; 85 FR 10968, Feb. 26, 2020]

§ 1416.406 Payment calculations.

(a) Once the loss threshold in § 1416.403(a) is satisfied, payment to an eligible orchardist or nursery tree grower for the cost of replanting or rehabilitating trees, bushes, or vines damaged or lost due to a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be calculated as follows:

(1) For the cost of planting seedlings or cuttings, to replace lost trees, bushes, or vines, the lesser of:

(i) 65 percent of the actual cost of the practice for eligible producers, or 75 percent of the actual cost of the practice for an eligible producer who is a beginning or veteran farmer or rancher, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(2) For the cost of pruning, removal, and other costs incurred for salvaging damaged trees, bushes, or vines, or in the case of mortality, to prepare the land to replant trees, bushes, or vines, the lesser of:

(i) 50 percent of the actual cost of the practice for eligible producers, or 75 percent of the actual cost of the practice for an eligible producer who is a beginning or veteran farmer or rancher, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(b) An orchardist or nursery tree grower that did not plant the trees, bushes, or vines, but has a production history for commercial purposes on planted or existing trees and lost the trees, bushes, or vines as a result of a natural disaster, in excess of 15 percent mortality (adjusted for normal mortality), will be eligible for the salvage, pruning, and land preparation payment calculation as specified in paragraph (a)(2) of this section. To be eligible for the replanting payment calculation as

specified in paragraph (a)(1) of this section, the orchardist or nursery grower who did not plant the stock must be a new owner who meets all of the requirements of §1416.404(b) or be considered the owner of the trees under provisions appearing elsewhere in this subpart.

(c) Eligible costs for payment calculation include costs for:

(1) Seedlings or cuttings, for tree, bush, or vine replanting;

(2) Site preparation and debris handling within normal horticultural practices for the type of stand being re-established, and necessary to ensure successful plant survival;

(3) Pruning, removal, and other costs incurred to salvage damaged trees, bushes, or vines, or, in the case of tree mortality, to prepare the land to replant trees, bushes, or vines;

(4) Chemicals and nutrients necessary for successful establishment;

(5) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(d) The following costs are not eligible:

(1) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, and windscreens.

(2) Any other costs not listed in paragraphs (c)(1) through (6) of this section, unless specifically determined eligible by the Deputy Administrator.

(3) Costs or expenses that the eligible orchardist or nursery tree grower did not actually bear or incur because someone or some other entity bore or incurred those costs or expenses, or the costs were reimbursed under another program. For example, if under any other program the expenses are paid for on behalf of the eligible orchardist or nursery tree grower, those expenses are not eligible for cost share under this subpart.

(e) Producers must provide the county committee documentation of actual costs to complete the practices, such as receipts for labor costs, equipment rental, and purchases of seedlings or cuttings.

(f) When lost stands are replanted, the types planted may be different from those originally planted. The alternative types will be eligible for payment if the new types have the same general end use, as determined and approved by the county committee. Payments for alternative types will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the type of plantings, seedlings, or cuttings differs significantly from the types lost, the costs may not be approved for payment.

(g) When lost stands are replanted, the types planted may be planted on the same farm in a different location than the lost stand. To be eligible for payment, site preparation costs for the new location must not exceed the cost to re-establish the original stand in the original location.

(h) Eligible orchardists or nursery tree growers may elect not to replant the entire stand. If so, the county committee will calculate payment based on the number of qualifying trees, bushes, or vines actually replanted.

(i) If a practice, such as site preparation, is needed to both replant and rehabilitate trees, bushes, or vines, the producer must document the expenses attributable to replanting versus rehabilitation. The county committee will determine whether the documentation of expenses detailing the amounts attributable to replanting versus rehabilitation is acceptable. In the event that the county committee determines the documentation does not include acceptable detail of cost allocation, the county committee will pro-rate payment based on physical inspection of the loss, damage, replanting, and rehabilitation.

(j) The cumulative total quantity of acres planted to trees, bushes, or vines for which a producer may receive payment under this part for losses that cannot exceed 1,000 acres per program year.

[79 FR 21097, Apr. 14, 2014, as amended at 83 FR 49472, Oct. 2, 2018; 85 FR 10968, Feb. 26, 2020]

§ 1416.407 Obligations of a participant.

(a) Eligible orchardists and nursery tree growers must execute all required documents and complete the TAP-funded practice within 12 months of application approval.

(b) Eligible orchardist or nursery tree growers must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

(c) Producers who do not meet all applicable requirements and obligations will not be eligible for payment.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS

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AUTHORITY: 7 U.S.C. 7231–7237, 7931–7936, and 9031- 40, 15 U.S.C. 714b and c.

Subpart A—General

SOURCE: 67 FR 63511, Oct. 11, 2002, unless otherwise noted.

§ 1421.1 Applicability and interest.

(a) The regulations in this subpart are applicable to crops of barley, small and large chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, wool, mohair, oilseeds and other crops designated by Commodity Credit Corporation (CCC). These regulations specify the general provisions under which Marketing Assistance Loans (MALs) and Loan Deficiency Payments (LDPs) will be administered by CCC. Additional terms and conditions are in the additional documents

required to receive MALs and LDPs. In any case in which money must be refunded to CCC in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This provision will apply, unless waived by the Deputy Administrator, irrespective of any other rule.

(b)(1) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the MAL and LDP Programs for the commodities specified in paragraph (a) of this section are available in Farm Service Agency (FSA) State and county offices. The forms for use in these programs will be prescribed by CCC.

(2) LDPs will be available for unshorn pelts, hay and silage.

(c) MALs and LDPs will not be available for any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Producers who produced eligible loan commodities are eligible for MALs or LDPs.

(e) Adjusted Gross Income (AGI) provisions specified in part 1400 of this chapter apply to this part.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32422, June 6, 2006; 74 FR 15649, Apr. 7, 2009; 80 FR 119, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.2 Administration.

(a) The MAL and LDP Programs will be administered under the general supervision of the Executive Vice President, CCC and will be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and employees thereof, cannot modify or waive any requirement of this part, except as provided in paragraph (e) of this section.

(c) The State committee will take any required action not taken by the county committee. The State committee will also:

(1) Correct or require correction of an action taken by a county committee that is not in compliance with this part; or

(2) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the MAL and LDP Programs.

(f) A representative of CCC may execute MAL and LDP 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, will be null and void.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15650, Apr. 7, 2009; 80 FR 120, 130, Jan. 2, 2015]

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

Administrative County Office is the FSA County Office where a producer's FSA records are maintained.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Calling a loan is accelerating or moving forward the maturity date of an outstanding MAL. A MAL can be called when, as determined by CCC, the terms and conditions of the MAL note and security agreement are violated, a producer incorrectly certifies a loan quantity or makes any fraudulent representation with respect to obtaining a loan, removing or disposing of a farm-stored commodity pledged as collateral for a loan without authorization, to protect CCC's interest, or in emergency situations.

CCC means the Commodity Credit Corporation.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for a MAL. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Chickpeas means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS).

(1) Small chickpea falls below a 20/64th sieve.

(2) Large chickpea stays above a 20/64th sieve.

CMA means a cooperative marketing association that is subject to regulations in Part 1425 of this chapter.

COC means the FSA county committee.

Commodity certificate exchange means the exchange, as provided for in §1421.111, 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.

Crop means with respect to a year, commodities harvested in that year. Therefore, the referenced crop year of a commodity means commodities that when planted were intended for harvest in that calendar year.

Current net worth ratio means current assets minus current liabilities, divided by current liabilities, based on the financial statement provided in connection with a DMA application or a recertification for DMA status.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) or a designee of that person.

DMA Service County Office is an FSA County Office designated by CCC to accept, process, and disburse bundled peanut MALs and LDPs to a DMA. In the absence of a centralized MAL and LDP processing system for peanuts, a service county FSA office is necessary for entering MALs and LDPs made by DMAs into CCC accounting systems.

Designated Marketing Association (DMA) means an entity, or a subsidiary thereof, that performs marketing functions for peanut producers and is designated to handle MALs and LDPs for them. A DMA is eligible to perform those functions only if the DMA meets the eligibility criteria set out elsewhere in this part.

Drawdown account is an account titled to the DMA at a financial institution and funded at the discretion of CCC for the purpose of allowing the DMA to advance funds to producers who have applied for MALs and LDPs before a subsequent MAL or LDP is made to the DMA by an assigned FSA county office.

Electronic warehouse receipt (EWR) means a receipt electronically filed in a central filing system by an approved provider as provided in an executed, ''Farm Service Agency Provider Agreement to Electronically File and Maintain Warehouse Receipts.''

FSA means the Farm Service Agency of the United States Department of Agriculture.

High moisture state means corn or grain sorghum having a moisture content in excess of CCC standards used to determine eligibility for MALs made by the Secretary.

Incorrect certification means the certifying of a quantity of a commodity for the purpose of obtaining a MAL or LDP in excess of the quantity eligible for such MAL or LDP or the making of any fraudulent representation with respect to obtaining MALs or LDPs.

Loan commodities means wheat, corn, grain sorghum, barley, oats, rice, soybeans, other oilseeds, peanuts, wool, mohair, dry peas, lentils, chickpeas, and other crops designated by CCC.

Loan deficiency payment (LDP) means a payment made in lieu of a MAL when the CCC-determined value, which is based on the current local price in a county, is below the applicable county loan rate. The payment is the difference between the two rates times the eligible quantity.

Loan settlement means farm stored commodities delivered to CCC and warehouse stored commodities forfeited to CCC, for the applicable crop years.

Locked in repayment rate means an announced repayment rate on a disbursed MAL that the producer has locked in

for 60 calendar days. All locked in repayment rates expire within 14 calendar days before the loan maturity date. MAL can be repaid either at principal plus interest or the repayment rate in effect on the date the repayment is made. The repayment rate can only be locked in one time for a designated quantity and, if multiple locked in repayment rates are in effect for quantities under MAL that have not had a locked in repayment rate, the oldest rate is always applied first.

MAL means marketing assistance loan.

Market loan gain is the loan rate, minus the repayment rate on loans repaid at a rate that is less than the loan rate. A producer's adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

Medium grain rice for the purposes of this part includes both short and medium grain rice as defined by the U.S. Standards for Rice.

Mohair means the hair sheared from a live Angora goat. Mohair does not include pelts, or hides or mohair shorn from pelts or hides.

Oilseeds means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as determined and announced by CCC.

Other crops designated by CCC means with respect to eligibilities for benefits under this part:

(1) Those crops harvested as other than grain, such as silage, haylage, earlage;

(2) Specific crops designated for grazing; or

(3) As otherwise designated by CCC.

Pulse crops means any crop of dry peas, lentils, and chickpeas as defined by CCC.

Recording FSA County Office is the FSA County Office that records eligibility data for producers designated as multi-county producers.

Rice means, unless otherwise noted, long grain rice and medium grain rice.

Secretary means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

Security for DMAs means a certified or cashier's check payable to CCC, an irrevocable commercial letter of credit in a form acceptable to CCC, a performance or surety bond conditioned on the DMA fully discharging all of its obligations under this part, or other form of financial security as CCC may deem appropriate.

Servicing agent bank means the bank designated as the financial institution for a CMA or a designated marketing association.

STC means the FSA State committee.

Unauthorized disposition means the conversion of any MAL quantity pledged as collateral for a farm-stored MAL without prior written authorization from the county committee.

Unauthorized removal means the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the MAL was approved to any other storage structure, whether or not such structure is located on the producer's farm, without prior written authorization from the county committee.

Unshorn pelt means the removed skin and attached wool from a slaughtered lamb that has never been shorn.

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) A pre-numbered, negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt (EWR) issued by such warehouse recorded in a central filing system or system maintained in one or more locations which are approved by FSA to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool.

[67 FR 63511, Oct. 11, 2002, as amended at 68 FR 37940, June 26, 2003; 70 FR 33799, June 10, 2005; 74 FR 15650, Apr. 7, 2009; 80 FR 120, 129, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.4 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop. With respect to wool and mohair, the producer must own, other than through a security interest mortgage, or lien, the sheep and goats that produced the wool and mohair respectively for a period of not less than 30 days.

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(iii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iv) 7 CFR part 996—Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States;

(v) 7 CFR part 1400—Payment Limitation & Payment Eligibility;

(vi) 7 CFR part 1402—Policy for Certain Commodities Available for Sale;

(vii) 7 CFR part 1403—Debt Settlement Policies and Procedures;

(viii) 7 CFR part 1405—Loans, Purchases, and Other Operations;

(ix) 7 CFR part 1412—Agriculture Risk Coverage, Price Loss Coverage, and Cotton Transition Assistance Programs; and

(x) 7 CFR part 1423—Commodity Credit Corporation Approved Warehouses.

(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 is 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 is considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. MALs and LDP documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive MALs or LDPs 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 MAL or LDP documents are signed by the guardian;

(3) Any note or loan deficiency payment program application signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(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) If more than one producer executes a note and security agreement with CCC, each such producer is jointly and severally liable for any violation of the terms and conditions of the note and security agreement and the regulations in this part. Each such producer also remains liable for repayment of the entire MAL amount until the MAL is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the MAL. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or MAL proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a MAL on farm-stored commodities if the producer has:

(i) Made a misrepresentation in connection with the MAL or LDP program;

(ii) Not allowed an FSA representative access to the site where commodities pledged as collateral for MALs were stored, or otherwise failed to cooperate in the settlement of MAL; or

(iii) Failed to adequately protect the interests of CCC in the commodity

pledged as collateral for a farm-stored MAL.

(2) A producer who is denied a farm-stored MAL will be eligible to pledge a commodity as collateral for a warehouse-stored MAL or provide some other form of financial assurance to obtain a farm-stored MAL.

(f) A CMA may obtain a MAL and LDP on eligible production of a MAL commodity on behalf of its members who are eligible to receive MALs or LDPs with respect to a crop of a commodity. For purposes of this subpart, the term ''producer'' includes a CMA.

(g) In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a MAL or LDP, payment will, upon proper application to the FSA county service center that disbursed the MAL or LDP, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15650, Apr. 7, 2009; 75 FR 19193, Apr. 14, 2010; 80 FR 120, 129, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.5 Eligible commodities.

(a) Commodities eligible to be pledged as collateral for a MAL made under this part are:

(1) Barley, corn, grain sorghum, oats, peanuts, soybeans, oilseeds, wheat, dry peas, lentils, chickpeas, rice and other crops designated by CCC produced and mechanically harvested in the United States;

(2) Dual purpose sorghum varieties as determined by CCC; and

(3) Wool and mohair produced and shorn from live animals in the United States.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

(c)(1) To be an eligible commodity, the commodity must be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. A commodity containing vomitoxin, aflatoxin, or Aspergillus mold may not be pledged for a nonrecourse MAL made under this part, except as provided by CCC in the MAL note and security agreement.

(2) The determination of eligibility for rice includes class, grade, grading factor, milling yields, and other quality factors and will be based upon the U.S. Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection.

(3) The determination of eligibility for peanuts includes type, quality, and quantity.

(4) With regard to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, wheat, and other commodities designated by CCC, the determination of eligibility will be based upon the Official U.S. Standards for Grain: U.S. Standards for Whole Dry Peas, Split Peas, and Lentils for dry peas and lentils; and the U.S. Standards for Beans for chickpeas, whether or not such determinations are made on the basis of an official inspection.

(5) With regard to hull-less barley, hull-less oats, mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, the determination of eligibility will be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be paid by CCC. The quality requirements that are used in administering MALs and LDPs for the oilseeds in this paragraph are available in USDA State and county FSA service centers.

(6) With regard to farm-stored peanuts, the determination of eligibility will be determined at the time of delivery to CCC by a Federal or State Inspector authorized or licensed by the Secretary.

(d) Eligible wool and mohair must:

(1) Have been produced and sheared from live sheep and goats, of domestic origin and located in the U.S. for a period of not less than 30 calendar days prior to shearing.

(2) Be of merchantable quality deemed by CCC to be suitable for MAL

and must have been shorn in the United States.

(e) When certifying acreage on farms in which an interest is held, the producer must provide acceptable evidence of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable for the production practices on such farm or have either the eligible or ineligible commodity measured by a representative of the county FSA service center at the producer's expense, before commingling.

(f) A commodity that is purchased, substituted, or acquired by sale, gift, or exchange of an existing harvested, sheared, or slaughtered commodity, or through any other transaction is ineligible to be pledged as collateral for a MAL; in addition an LDP will not be made with respect to such commodities.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32422, June 6, 2006; 74 FR 15651, Apr. 7, 2009; 75 FR 19193, Apr. 14, 2010; 80 FR 121, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.6 Beneficial interest.

(a) To be eligible to receive MALs and loan deficiency payments, a producer must have beneficial interest in the commodity that is tendered to CCC for a MAL or is requested for a LDP. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has title to and control of the commodity that is tendered to CCC as collateral for a MAL or of the commodity that will be used to determine a LDP. A determination of whether a person has beneficial interest in a commodity is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(b) Except as provided in paragraph (e) of this section, when requesting a MAL for a loan commodity, in order to have beneficial interest in the commodity tendered as collateral for the MAL, a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted (with respect to wool and mohair from time of shearing) through the earlier the date the MAL was repaid or the maturity date of the MAL;

(3) Have control of the commodity from the time of planting (for wool and mohair from the time of shearing) through the maturity date of the MAL. To have control of the commodity, such person must have complete decision-making authority regarding whether the commodity will be tendered as collateral for a MAL, when the MAL will be repaid, or if the collateral will be forfeited to CCC in satisfaction of the MAL obligations of such person, and where the commodity will be maintained during the term of the MAL;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse authorized in accordance with § 1421.103(c). Delivery of the commodity to a location other than to such an authorized warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, feed or grain bank, or other facilities as determined by CCC will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been authorized by CCC under § 1421.103(c).

(c) Except as provided in paragraph (e) of this section, when requesting a loan deficiency payment for an eligible commodity, in order to have beneficial interest in the commodity a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted, with respect to wool and mohair from the time of shearing, or from the time of slaughter for unshorn pelts, through

the date the producer has elected to determine the loan deficiency payment rate;

(3) Have control of the commodity. For control such person must have complete decisionmaking authority regarding whether a loan deficiency payment will be requested with respect to the commodity; when the loan deficiency rate will be selected; and where the commodity will be maintained prior to the date on which the LDP rate will be determined;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse authorized in accordance with §1421.103(c). Delivery of the commodity to a location other than to an authorized warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, feed or grain bank, or unauthorized storage facility, will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been authorized by CCC under §1421.103(c).

(d) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), in order to facilitate handling situations involving the death of a producer, CCC will consider an estate, heirs of the deceased producer, and a person to whom title to a commodity has passed by virtue of State law upon the death of the producer to have beneficial interest in a commodity produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(e) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), a person who purchases or otherwise acquires a commodity from a producer under any circumstances does not obtain beneficial interest to the commodity whether such purchase or acquisition is made prior to the harvest of the crop or after harvest; however, CCC will consider a person to have beneficial interest in a commodity if, prior to harvest, such person has obtained title to the growing commodity at the same time that such person obtained full title to the land on which such crop was growing;

(f) If marketing assistance loans and loan deficiency payments are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved CMA or its member approved CMA, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved CMA shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

(g) A producer will lose beneficial interest in a commodity if the producer receives any payment from any person under any contractual arrangement with respect to a commodity if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the commodity or control of the commodity prior to or after harvest, shearing, or slaughter unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the commodity and such option contains the following language:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the commodity and beneficial interest in the commodity as specified in 7 CFR 1421.6 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 that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option.

(h) Inclusion in a contract of one or more of the following types of provisions will not result in the loss of beneficial interest in a commodity:

(1) A provision that allows the producer to select the sales price of the commodity at a time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred-price, forward or price later contract. The following conditions apply:

(i) Producers under a deferred-price, forward, or price later contract will lose beneficial interest in the commodity the earlier of receipt of any payment or once the commodity is applied in fulfillment of the delivery requirements of such a contract.

(ii) Beneficial interest in the commodity is retained by the producer if the contract has no restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity.

(2) A provision between the producer and a warehouse authorized in accordance with §1421.103(c) for the storage of MAL collateral that provides the producer a period of time following the date of physical delivery of the commodity to elect whether the commodity is to be stored and receipted on behalf of the producer or is to be considered transferred to the warehouse if CCC determines such a provision is required.

(i) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a MAL or a LDP may be made with respect to such production if, at the time of the request for such a MAL or LDP, the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

[71 FR 32422, June 2, 2006, as amended at 71 FR 51426, Aug. 30, 2006; 71 FR 60413, Oct. 13, 2006; 74 FR 15651, Apr. 7, 2009; 80 FR 121, Jan. 2, 2015]

§1421.7 Requesting MALs and LDPs.

(a) A producer may apply for a MAL or LDP at any FSA county office. The receiving FSA county office will forward the MAL or LDP request to the administrative county office, as specified in part 718 of this title, that is responsible for administrating programs for the farm on which the commodity was produced. The administrative county office will process and approve the MAL or LDP.

(b) A MAL or LDP may be requested in person, by mail, or by electronic format designated by CCC. Forms prescribed by CCC may be obtained from the FSA Web site.

(c) To receive a MAL or LDP for an eligible commodity, a producer must execute a note and security agreement or LDP application on or before the applicable final loan availability date, as follows:

(1) March 31 of the year following the year in which the following crops are normally harvested: barley, canola, flaxseed, oats, rapeseed, crambe, sesame seed, and wheat.

(2) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, sunflower seed, dry peas, lentils, and chickpeas.

(3) January 31 of the year following the year in which peanuts are normally harvested or wool and mohair are normally sheared.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15651, Apr. 7, 2009; 80 FR 121, Jan. 2, 2015]

§1421.8 Eligible quantity.

(a) With respect to MALs and LDPs for:

(1) Farm-stored commodities, all determinations of weight and quality, except as otherwise agreed to or required by CCC, will be determined at the time of delivery of the commodity to CCC or at the time the LDP application is filed for measured requests, if applicable, or selected for spot-check for certified requests.

(2) Warehouse-stored commodities, all determinations of grade, weight and quality, except as otherwise agreed to or required by CCC, will be determined at the time the MAL is forfeited to CCC.

(b)(1) A producer may, before the final MAL availability date for obtaining a MAL for a commodity, repledge as collateral for securing a MAL any commodity that had been previously pledged as collateral for a MAL, except with respect to:

(i) Commodities that have been redeemed at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as determined by CCC.

(ii) Commodities on which a LDP has been received.

(2) The commodity repledged as security for the subsequent MAL will have the same maturity date, under §1421.101 as the original MAL.

(c)(1) The MAL documents will not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible harvested commodity, is in existence, and is in authorized farm or warehouse storage, as determined by CCC. If the commodity was not either an eligible commodity, in existence, or in authorized storage at the time of disbursement, the total amount disbursed under the MAL and charges plus interest must be refunded promptly by the producer.

(2) CCC will limit the total quantity for MAL or LDP disbursement to 100 percent of the quantity of such MAL or LDP application. A producer may obtain a separate MAL or LDP before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are otherwise eligible.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15651, Apr. 7, 2009; 80 FR 121, 129, Jan. 2, 2015]

§1421.9 Basic loan rates.

(a) Basic MAL rates for a commodity may be established on a National, State, regional, county basis or other basis, will be at rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, location and other factors applicable to the commodity and as otherwise provided in this section.

(b) The basic MAL rates for wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, dry peas, lentils, chickpeas, crambe, sesame seed, wool, mohair and other crops designated by CCC will be determined by CCC and made available to State and county offices.

(c) Subject to adjustment as specified in paragraph (f) of this section, in case of forfeiture, for all commodities except rice and peanuts, warehouse-stored MALs will be disbursed at levels based on the basic county MAL rate for the county where the commodity is stored.

(1) For rice, subject to adjustment as specified in paragraph (f) of this section, in case of forfeiture, warehouse-stored MALs will be disbursed at levels based on the milling yields times the whole and broken kernel MAL rates.

(2) For peanuts, warehouse-stored MALs will be disbursed at levels based on National loan rates by peanut type, adjusted for the schedule of premiums and discounts on the basis of grade, quality, and other factors specified on warehouse receipts.

(d) The Secretary will establish a single loan rate in each county for each kind of other oilseeds, such as but not limited to, sunflower, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as designated by the Secretary.

(e) Adjustments by the Secretary to establish loan rates for loan commodities, except rice, on a county basis will not be lower than 95 percent of the national average loan rate, if those loan rates do not result in an increase in outlays. Adjustments in this section will not result in an increase in the national average loan rate for any year.

(f) For all crop years, premiums and discounts will not apply for all eligible

loan commodities at loan disbursement, except for peanuts or additional commodities as determined by the Deputy Administrator on a crop year basis. However, premiums and discounts will apply if the eligible loan commodities are forfeited or delivered to CCC and any deficiency must be repaid to CCC.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15651, Apr. 7, 2009; 80 FR 122, 129, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.10 Loan repayment rates.

(a) For the applicable crop years of barley, corn, grain sorghum, oats, wheat, dry peas, lentils, chickpeas, oilseeds, wool, mohair, and other crops as designated by CCC (other than peanuts, long grain rice, medium grain rice, and confectionery and each other kind of sunflower seed (other than oil sunflower seed)), a producer may repay a nonrecourse MAL at a rate that is the lesser of:

(2) A rate (as determined by the Secretary) that is calculated based on average market prices for the loan commodity during a preceding 30-day period and that the Secretary has determined will minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries; or

(3) A rate that the Secretary may develop using alternative methods for calculating a repayment rate for a loan commodity that the Secretary determines will: Minimize potential loan forfeitures; minimize the accumulation of stocks of the commodity by the Federal Government; minimize the cost incurred by the Federal Government in storing the commodity; allow the commodity produced in the U.S. to be marketed freely and competitively, both domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

(b) To the extent practicable, CCC will determine and announce repayment rates under paragraphs (a)(2) and (a)(3) of this section based upon market prices at appropriate U.S. markets as determined by CCC and these repayment rates may be adjusted to reflect grade, type, quality, location, and other factors for each crop of a commodity as follows:

(1) On a weekly basis in each county for oilseeds, except canola, flaxseed, soybeans, and sunflower seed;

(2) On a daily basis in each county for barley, canola, corn, flaxseed, grain sorghum, oats, soybeans, sunflower seed and wheat; and

(3) On a weekly basis regionally for dry peas, lentils, chickpeas, wool and mohair.

(1) A producer may repay a nonrecourse MAL for peanuts at a rate that is the lesser of:

(i) The loan rate established for the commodity under § 1421.9, plus interest; or

(ii) A rate that the Secretary determines will: Minimize potential loan forfeitures; minimize the accumulation of stocks of the commodity by the Federal Government; minimize the cost incurred by the Federal Government in storing the commodity; and allow the commodity produced in the United States to be marketed freely and competitively, both domestically and internationally.

(2) To the extent practicable, CCC will determine and announce weekly alternative repayment rates for peanuts.

(d) For peanuts, the Secretary will require the repayment of handling and other associated costs paid under § 1421.104 for all peanuts pledged as collateral for a MAL that are redeemed under this section.

(e) The Secretary will permit producers to repay a MAL for long grain rice and medium grain rice at a rate that is the lesser of:

(1) The loan rate established for the commodity under § 1421.9, plus interest; or

(2) The prevailing world market price for the commodity, as determined and adjusted by the Secretary in accordance with this section.

(f) For purposes of this section, the Secretary will prescribe—

(1) A formula to determine the prevailing world market price for long grain rice and medium grain rice and

(2) A mechanism by which the Secretary will announce periodically those prevailing world market prices.

(g) Adjustments will be made to the prevailing world market price for long grain rice and medium grain rice.

(1) The prevailing world market price for long grain and medium rice determined under paragraph (f) of this section will be adjusted to U.S. quality and location.

(2) In making adjustments under this subsection, the Secretary will establish a mechanism for determining and announcing the adjustments in order to avoid undue disruption in the U.S. market.

(h)(1) The prevailing world market price for a class of rice will be determined by CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and will be expressed in U.S. equivalent values F.O.B. (free on board) vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(2) Export transactions involving rice and all other related market information will be monitored on a continuous basis. Relevant information may be obtained for this purpose from USDA field reports, international organizations, public or private research entities, international rice brokers, and other sources of reliable information.

(3) The prevailing world market price for a class of rice adjusted to U.S. quality and location, the adjusted world price (AWP), as determined under paragraph (h)(5) of this section, will apply to this section.

(4) The adjusted world price for each class of rice will equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined under paragraphs (h)(1) and (h)(2) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice will be adjusted to reflect an F.O.B. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to F.O.B. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking charges, storage, and administrative costs.

(ii) The price determined under paragraph (h)(4)(i) of this section will be adjusted to reflect the market value of the total quantity of whole kernels contained in milled rice by deducting the world value of broken kernels it contains, with the value of the broken kernels determined by multiplying a formulaic quantity of broken kernels (4 percent per hundredweight) by the world market value of broken kernels. The world market value of broken kernels will be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined under paragraph (h)(4)(ii) of this section will be adjusted to reflect the per-pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96 percent per hundredweight).

(iv) The price determined under paragraph (h)(4)(iii) of this section will be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined under paragraph (h)(4)(iv) of this section will be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price an estimated cost of milling rough rice; and an estimated cost of transporting rough rice from farm to mill locations.

(5) The adjusted world price for each class of rice, loan rate basis, will be determined by CCC and announced, to the extent practicable, on or after 7 a.m. Eastern Standard Time each Wednesday or more frequently as determined necessary by CCC, continuing through the later of:

(i) The last Wednesday of July in the calendar year following the year the rice crop was harvested, or in which the rice MAL matures,

(ii) The last Wednesday of the latest month the rice MAL matures, or

(iii) If Tuesday is not a normal business day, the price determination may be made on the next work day and announced the following day, on or after 7 a.m. Eastern Standard Time.

(i) The producer may repay a MAL under this section for confectionery and each other kind of sunflower seed (other than oil sunflower seed) at a rate that is the lesser of:

(1) The loan rate established for the commodity under § 1421.9, plus interest, or

(2) The repayment rate established for oil sunflower seed.

(j)(1) On a form prescribed by CCC, a producer may request to lock in the applicable repayment rate for a period of 60 calendar days or for the remaining life of the MAL term, whichever is less, provided that no request may be granted within 14 calendar days of the end of the MAL.

(2) The request to lock in the applicable repayment rate must be received in the FSA county service center that disbursed the MAL.

(3) The repayment rate that is locked in will be the rate in effect when the request to lock in is approved.

(4) The repayment rate may be locked in on outstanding farm-stored or warehouse-stored loans.

(5) The repayment rate that is locked in will expire as provided in paragraph (j)(1) of this section.

(6) The requests can only be completed one time for a designated quantity.

(7) For multiple locked in requests, the oldest unexpired locked in repayment rate is applied first.

(8) The completed and signed form can be submitted in person, by facsimile, or electronically.

(9) The requests cannot be canceled, terminated, or changed after approval.

(10) The locked in applicable repayment rate will transfer to any MAL disbursed outside of the originating county where the commodity was stored.

(11) Once a repayment rate is locked in it cannot be extended.

(k) If a producer fails to repay a MAL within the time prescribed by CCC under the terms and conditions of the request to lock in a market loan repayment rate, the producer may repay the MAL:

(1) On or before maturity, at the lesser of:

(i) Principal plus interest as determined by CCC; or

(ii) The repayment rate in effect on the day the repayment is received in the FSA County Service Center.

(2) After maturity, at principal plus interest.

(l) When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored MAL, the producer must request and obtain prior written approval on a CCC-approved form and comply with the terms and conditions of such form, to remove a specified quantity of the commodity from storage. Approval does not constitute release of CCC's security interest in the commodity or release of producer liability for amounts due CCC for the MAL indebtedness if payment in full is not received by the FSA county office. Failure to repay a MAL within the time period prescribed by CCC in the case of a farm-stored loan and delivery of the pledged collateral to a buyer is a violation of the agreement. In the case of such violation, the producer must repay the loan principal

and interest or another amount as determined by the Deputy Administrator, FSA, as specified in §1421.109.

(m) The producer may obtain county committee approval of a release of all or part of pledged collateral for a warehouse-stored MAL at or before the maturity of such MAL by paying to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest or

(2) An amount less than the principal amount of the MAL and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the collateral for such MAL.

(n) A partial release of marketing assistance loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the marketing assistance loan must be released only to the producer. However, such receipt may be released to persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(o) The note and security agreement will not be released until the marketing assistance loan has been satisfied in full.

(p)(1) If the commodity is moved from storage without obtaining prior approval to move such commodity, such removal will constitute unauthorized removal or disposition, as applicable under §1421.109(b), unless the removal occurred on a non-workday and the producer notified the county office on the next workday of such removal.

(2) Any MAL quantities involved in a violation of §1421.109 must be repaid under §1421.109(e).

(q) In the event of a severe disruption to marketing, transportation, or related infrastructure, the Secretary may modify the repayment rate otherwise applicable under this section for marketing assistance loans. Any adjustment made to the repayment rate for marketing assistance loans for a loan commodity under §1421.5 will be in effect on a short-term and temporary basis, as determined by the Secretary.

[74 FR 15652, Apr. 7, 2009, as amended at 80 FR 122, 129, Jan. 2, 2015]

§1421.11 Spot checks.

(a) CCC may inspect the collateral for MALs, and producers with such MALs must allow CCC reasonable access to the farm and storage facility as necessary to conduct ''spot check'' collateral inspections. Spot checks are intended to verify that the quality and quantity of farm-stored commodities pledged as collateral for MALs are maintained by the producer.

(b) LDPs are selected for spot check to ensure that all eligibility requirements, as required by CCC, are met in order to receive such LDP.

(c) Producers must present production evidence for commodities acceptable to CCC when a spot check is conducted.

[67 FR 63511, Oct. 11, 2002, as amended at 80 FR 122, Jan. 2, 2015]

§1421.12 Production evidence.

(a) Producers who redeem MAL collateral at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as CCC determines or receives an LDP may be required to provide CCC with:

(1) Evidence of production of the collateral such as:

(i) Evidence of sales;

(ii) Delivery evidence;

(iii) Load summaries from warehouse, processor, or buyer;

(iv) Warehouse receipts including EWRs;

(v) Paid measurement service;

(vi) Spot check measurements with paid measurement service;

(vii) Cleaning tickets for seed;

(viii) Scale tickets, if not issued by the producer for the producer's own production;

(ix) Core tests for wool and mohair; or

(x) Maximum eligible quantity as determined by CCC.

(2) The storage location of the collateral that has not been otherwise disposed of and access to such collateral;

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity;

(4) In the case of wool and mohair, permission to examine and inspect the sheep herd; and

(5) Any other evidence requested by the county FSA service center or the Deputy Administrator, FSA.

(b) A producer who fails to provide acceptable evidence of production is be required to repay the market loan gain or LDP and charges, plus interest, as determined by CCC.

[67 FR 63511, Oct. 11, 2002, as amended at 80 FR 122, Jan. 2, 2015]

§ 1421.13 Special loan deficiency payments.

(a)(1) Eligible producers of unshorn pelts produced from live sheep and hay and silage derived from an eligible loan commodity as provided in §1421.5 are eligible to request unshorn pelt, hay, and silage quantities for a LDP under subpart C of this part.

(2) Unshorn pelts, hay, and silage derived from an eligible loan commodity are not eligible to be pledged as collateral to obtain a MAL under subpart B of this part.

[71 FR 32424, June 6, 2006, as amended at 74 FR 15654, Apr. 7, 2009; 80 FR 129, Jan. 2, 2015]

§ 1421.14 Obtaining peanut MALs.

(a) Peanuts MALs to individual producers may be obtained through:

(1) County offices; or

(2) A designated Marketing Association or a CMA approved by CCC.

(b) The MAL documents will not be presented for disbursement unless the peanuts pledged as collateral for the MAL are eligible as specified in §1421.8. If the peanuts were ineligible at the time of the disbursement, the total amount disbursed under MAL, or as an LDP, plus charges and interest will be refunded promptly.

[67 FR 63511, Oct. 11, 2002, as amended at 80 FR 123, Jan. 2, 2015]

Subpart B—Marketing Assistance Loans

SOURCE: 67 FR 63511, Oct. 11, 2002, unless otherwise noted.

§ 1421.100 Applicability.

This subpart provides the terms and conditions for MALs offered by CCC. Additional terms and conditions are also in the note and security agreement which the producer must sign to receive such MALs.

[67 FR 63511, Oct. 11, 2002, as amended at 80 FR 129, Jan. 2, 2015]

§ 1421.101 Maturity dates.

(a)(1) All MALs will mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed and approved except for transferred MAL collateral. The maturity date for transferred MAL collateral will be the maturity date applicable to the original MAL that was transferred.

(2) CCC may at any time call the MAL by notifying the producer at least 30 days in advance of the accelerated maturity date.

(b) The maturity date of any MAL may not be extended.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009; 80 FR 123, 129, Jan. 2, 2015]

§ 1421.102 Adjustment of basic loan rates.

(a) Basic loan rates are established under §1421.9 and will be adjusted or not adjusted as follows:

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county MAL rate if pledged as collateral for a nonrecourse loan. Loan rates for commodities with acceptable levels of contamination will not be adjusted if pledged as collateral for recourse loans.

(2) For farm-stored commodities where the test weight discounts are on the:

(i) Crop year specific schedules of premiums and discounts, the MAL rate will be adjusted for the higher of the discount for test weight or grade based on test weight.

(ii) Additional schedule of discounts, the MAL rate will be reduced to 20 percent of the county loan rate.

(3) With respect to commodities harvested, excluding silage or hay, as other than grain and pledged as collateral for a nonrecourse MAL, the MAL

rate will be discounted to 30 percent of the county loan rate.

(4) With respect to farm-stored wheat, the basic county loan rate will not be adjusted to reflect the protein content.

(5) With respect to Segregation 2 and 3 peanuts as determined by CCC, the MAL rate will be discounted to 35 percent of the applicable loan rate.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009; 80 FR 123, 129, 130, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.103 Authorized storage.

(a) Authorized farm storage is:

(1) A storage structure located on or off the farm, (excluding public warehouses that do not enter into an agreement with CCC), that CCC determines to be controlled by the producer which affords safe storage of collateral pledged for a MAL;

(2) If determined and announced to be available in a State or county, on ground storage and other temporary storage structures approved by CCC.

(3) As determined by CCC, temporary authorized storage may also include:

(i) On-ground storage or;

(ii) Other storage arrangements.

(b) CCC may reduce the quantity of a commodity pledged as collateral for a MAL made available under paragraph (a)(2) of this section to not more than 75 percent of such otherwise eligible quantity in order to protect the interests of CCC. CCC may also limit the length of time the commodity may be stored on-ground or in temporary structures to not more than 90 days. A MAL made with respect to such commodity that is not moved to a structure specified in (a)(2) within 90 days of the date the MAL was disbursed may be called by CCC.

(c)(1) Authorized warehouse storage consists of warehouses that:

(i) If Federally licensed, are in compliance with 7 CFR part 735 or

(ii) If not Federally licensed, are in compliance with State laws and that issue warehouse receipts that meet the criteria specified in §1421.107.

(iii) If not Federally licensed or in compliance with State Laws and issue warehouse receipts that meet the criteria specified in §1421.107, have entered into a storage agreement with CCC.

(2) Notwithstanding paragraph (c)(1) of this section, if storing peanuts, the warehouse must in all cases have entered into a storage agreement with CCC. For storing other crops, notwithstanding paragraph (c)(1) of this section, CCC may, on a case-by-case basis, still require a warehouse operator that would qualify under paragraphs (c)(1)(i) or (ii) of this section to enter into a storage agreement if deemed necessary by the Deputy Administrator to be needed to protect CCC's interests.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009; 80 FR 123, 129, Jan. 2, 2015]

§ 1421.104 Making MALs.

(a)(1) CCC may conduct such lien searches and may perfect its interest in loan commodities under State law as it deems to be in its interest.

(2) The cost for terminating the financing statement for MALs disbursed under this part before the end of the term will be paid by the producer.

(3) If there are any liens or encumbrances on the commodity pledged as collateral for a MAL made under this part, waivers that fully protect CCC's interest must be obtained even though the liens or encumbrances are satisfied from MAL proceeds disbursed under this part. No additional liens or encumbrances will be placed on the commodity after such a MAL is approved.

(b) Fees, charges, interest, and all applicable approved commodity assessment collections must be paid by the producer at a rate CCC determines or, in the case of assessments, at a rate approved by the assessment authority. Such fees, charges, and interest include:

(1) A non-refundable loan service fee;

(2) Interest that accrues on a loan under part 1405 of this chapter.

(c) To ensure proper storage of peanuts for which a MAL is made under this section, the Secretary will pay reasonable handling and other associated costs (other than storage) incurred at the time at which the peanuts are placed in a warehouse stored

MAL. Such rates will be available in the State and county FSA offices.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32424, June 6, 2006; 74 FR 15654, Apr. 7, 2009; 75 FR 19193, Apr. 14, 2010; 80 FR 123, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.105 Farm-stored MALs.

(a) The producer of a commodity pledged as security for a farm-storage MAL:

(1) Certifies the quantity of such commodity on the MAL application, or;

(2) Has such quantity measured by CCC at the measurement service rate established by CCC.

(b) The State committee may establish a MAL percentage not to exceed a percentage CCC establishes or it may apply quality discounts to the loan rate in each year for each commodity on a statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee will consider conditions in the State or areas within a State to determine if the MAL percentage should be reduced below the maximum MAL percentage or the quality discounts should be applied to the basic county MAL rate to provide CCC with adequate protection. MALs disbursed based upon loan percentages previously lowered and loan rates adjusted for quality will not be altered if conditions within the State or areas within the State change to substantiate removing such reductions. Percentages established or loan rates adjusted for quality under this section will apply only to new MALs and not to outstanding MALs. In determining loan percentages or the necessity to apply quality discounts, the State committee will consider any factor at its discretion, including the following:

(1) General crop conditions;

(2) Factors affecting quality peculiar to an area within the State; and

(3) Climatic conditions affecting storability.

(c) An eligible quantity of a commodity that is commingled with an ineligible quantity of the commodity is not eligible to be collateral for a MAL unless the producer, when requesting a MAL designates all structures that may be used for storage of the MAL collateral.

(1) In such cases, the producer is not required to obtain prior written approval from the county committee before moving MAL collateral from one designated structure to another designated structure.

(2) In all other instances, if the producer intends to move MAL collateral from a designated structure to an undesignated structure, the producer must request prior approval from the county committee in writing. The producer may request that the eligible or ineligible commodity be measured by a representative of the county office, at the producer's expense, before commingling, but such measurement is not required. Prior to commingling, with respect to wool and mohair, a representative of the FSA county committee may determine an average production of the wool and mohair in a manner approved by CCC.

(d)(1) Two or more producers may obtain:

(i) A single joint MAL for commodities that are stored in the same farm storage facility; or

(ii) Individual MALs for their share of the commodity that is commingled in a farm storage facility with commodities owned by other producers if such other producers execute an agreement that provides that such producers will obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a MAL will be liable for any damage incurred by CCC for the deterioration or unauthorized removal or disposition of such commodities.

(2) In such cases, each producer must execute a note and security agreement with CCC, and each such producer will be jointly and severally liable for the violation of the terms and conditions of the note and the requirements of this part. Each producer is also liable for repayment of the entire MAL amount until the MAL is fully repaid without regard to their share in the

commodity pledged as collateral. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such commodities, or MAL proceeds, after execution of the note and security agreement by CCC.

(e)(1) A producer, when requesting a MAL, will designate in writing specific storage structures.

(2) The producer is not required to request prior approval before moving marketing assistance loan collateral between such designated structures.

(3) Movement of MAL collateral to any other structures not designated or the disposal of such loan collateral without prior written approval of the county committee, will subject the producer to administrative actions.

(4) The producer is responsible for any loss in quantity or quality of the farm-stored commodity pledged as collateral.

(5) CCC will not assume any loss in quantity or quality of the MAL collateral for farm-stored MALs.

(f) If the producer does not pay CCC the total amount due in accordance with a MAL by the maturity date, CCC has the right to acquire title to the MAL collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored MALs, the producer may, as CCC determines, deliver the MAL collateral in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of 110 percent of the outstanding farm-stored MAL quantity. If a quantity in excess of 110 percent of the outstanding farm-stored MAL quantity is shown on the warehouse receipt or other documents, the producer must provide replacement warehouse receipts and delivery documents. If the warehouse receipt and such other documents applicable to the settlement are not replaced to reflect the excess amount, CCC will provide for such corrected documents and apply charges for such service, if any, to the producer's account as charges for settlement on the MAL.

[67 FR 63511, Oct. 11, 2002, as amended at 80 FR 123, 129, Jan. 2, 2015]

§ 1421.106 Warehouse-stored MAL collateral.

(a) A commodity may be pledged as collateral for a warehouse-stored MAL in the quantity delivered to CCC for storage at a warehouse that meets standards for approval at part 1423 of this chapter. Such quantity is the net weight specified on the warehouse receipt or supplemental certificate.

(b) Two or more producers may obtain a single joint MAL for commodities stored in an approved warehouse if the warehouse receipt pledged as collateral is issued jointly to the producers.

(c) If more than one producer executes a note and security agreement with CCC, each such producer is jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer also remains liable for repayment of the entire MAL amount until the MAL is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the MAL. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or MAL proceeds, after execution of the note and security agreement by CCC.

(d) Storage rates that CCC has approved to be deducted from MAL proceeds are available in FSA State and county offices and other USDA service centers. Deductions are based upon entries on the warehouse receipt or supplemental certificate, but the storage rate is not to exceed the storage rate CCC has approved. No storage deduction is to be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the commodity covered by this receipt through (date through which storage has been provided). No lien will be

asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(e) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse will be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(f) For hard red winter and hard red spring wheat tendered to CCC and stored in an approved warehouse, producers must obtain official protein content determinations or, as CCC determines is acceptable, protein content may be determined by mutual agreement between the producer and the warehouse operator. Costs of determinations will not be paid by CCC.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009;80 FR 124, 129, Jan. 2, 2015]

§ 1421.107 Warehouse receipts.

(a) Warehouse receipts for MALs tendered to CCC as specified in § 1421.3 may either be paper or electronic. All receipts, whether paper or electronic, must meet all the applicable provisions of this section and this part, and CCC program document requirements. EWRs must be issued by a provider approved by CCC.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipt must be properly endorsed on its reverse side certifying that the crop is free of encumbrances in order for title to vest in the holder. Receipts must be issued by an authorized warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit.

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership is to be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for a MAL if such warehouse is licensed under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an authorized warehouse must indicate that the commodity is insured. CCC shall not be responsible for the cost of such insurance.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, for rice, such receipt must also state the milling yield of the rice, and for wool, such receipts must also state the yield and micron of the wool.

(f) With respect to peanuts, a warehouse receipt must be submitted exhibiting grade, type, and segregation for peanuts tendered to CCC.

(g)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued by an authorized warehouse as specified in § 1421.103(c)(1), as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by licensing authority;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The type of commodity;

(vi) The date the commodity was deposited or received;

(vii) The date to which storage has been paid or the storage start date;

(viii) Whether the commodity was received by rail, truck or barge;

(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(x) The signature of the warehouse operator or the authorized agent; and

(xi) For warehouses operating under a merged warehouse code agreement (KC–385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (g)(1) of this section, additional commodity specific requirements will be determined by CCC and be available at State and county offices and the Kansas City Commodity Office.

(h) If a warehouse receipt indicates that the commodity tendered for MAL grades ''infested'' or ''contains excess moisture,'' or both, the receipt must be accompanied by a supplemental certificate in order for the commodity to be eligible for a MAL. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows ''infested'' and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the ''infested'' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries must reflect a drying or blending shrinkage as provided in paragraph (h)(2)(iv) of this section.

(ii) When a supplemental certificate is issued under paragraphs (g)(1) and (h)(2)(i) of this section, the grade, grading factors, and the quantity shown on such certificate will supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate represents the quantity after drying or blending.

(iv) For commodities dried or blended under paragraph (h)(2)(iii) of this section, such quantity must reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats: 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Soybeans: 14.0 percent;

(*7*) Wheat: 13.5 percent; and

(*8*) Peanuts: 10.0 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent;

(*6*) Sunflower Seed: 10.0 percent;

(*7*) Crambe: 10.0 percent; and

(*8*) Sesame Seed: 10.0 percent.

(i)(1) If, under paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts may be subject to a lien for warehouse charges. For all commodities except peanuts, the producer who pledged such a receipt as collateral for a MAL under this part pays to CCC all costs incurred by CCC as result of the existence of the lien. In no event is a warehouse operator entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(j) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed under paragraph (g) of this section.

(k) If the warehouse issues an EWR for the commodity, the producer must notify the EWR provider to make CCC the holder of the EWR and to secure an affirmation verifying that CCC has been made the holder of the EWR.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009; 75 FR 19193, Apr. 14, 2010; 80 FR 124, 130, Jan. 2, 2015]

§ 1421.108 Transfers and reconcentrations.

(a) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored MAL to a warehouse-stored MAL at any time during the MAL period.

(1) Transfer of all or part of the farm-stored MAL collateral to an authorized warehouse will be made through the pledge of warehouse receipts for the commodity placed under a warehouse-stored MAL. The loan rate of the transferred MAL will be the same as the loan rate of the original MAL. The MAL quantity for the warehouse-stored MAL cannot exceed the loan quantity transferred from the farm-stored MAL.

(2) Any amounts due the producer will be disbursed by the FSA county service center.

(b) The producer must request county committee approval before the transfer of a warehouse-stored MAL to a farm-stored MAL. The county committee may approve the transfer of part or all of a warehouse-stored MAL at any time during the MAL period. Quantities pledged as collateral for a farm-stored MAL will be based on a measurement or a calculation of average production of wool and mohair, by a representative of the county office before approving the farm-stored MAL. The producer must immediately repay the amount by which the farm-stored MAL is less than the warehouse-stored MAL and charges plus interest on the shortage. The maturity date of the farm-stored MAL is the maturity date applicable to the warehouse-stored MAL that was transferred.

(c) Upon the filing of the Reconcentration Agreement and Trust Receipt by the producer and warehouse operator, CCC may, during the MAL period, approve the reconcentration in another authorized warehouse for all or part of a commodity that is pledged as collateral for a warehouse-stored MAL. Any such approval will be subject to the terms and conditions in the Reconcentration Agreement and Trust Receipt. A producer may, before the new warehouse receipt is delivered to CCC, pay CCC:

(1) The principal amount of the MAL and charges plus interest and applicable charges; or

(2) If CCC so announces, an amount less than the principal amount of the MAL and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such MAL.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15654, Apr. 7, 2009; 80 FR 124, 129, 130, Jan. 2, 2015]

§ 1421.109 Personal liability of the producer.

(a) When a producer obtains a commodity MAL, the producer agrees, in writing, not to:

(1) Provide an incorrect certification of the quantity or make any fraudulent or erroneous representation for the MAL;

(2) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored MAL without prior written approval from CCC in accordance with § 1421.10; or

(3) Violate the terms and conditions of the note and security agreement, which will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible. If CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages will be assessed on the quantity of the commodity that is involved in the violation.

(b) Such violations as referred to in paragraph (a)(3) of this section may include, but are not limited to:

(1) Incorrect certification;

(2) Unauthorized removal; and

(3) Unauthorized disposition.

(c) If the county committee determines that the producer has committed such violations, liquidated damages will be assessed on the quantity of the commodity that is involved in the violation.

(d) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent

of the MAL rate applicable to the MAL note.

(e) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as a result of unauthorized removal or disposition, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the MAL which is equivalent to such quantity of the commodity. In the case of these violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed according to paragraph (d) of this section and the commodity involved in the violation must be redeemed at the lesser of:

(i) The rate at which the MAL was disbursed, plus interest and any other charges assessed under the note and security agreement; or

(ii) The alternative repayment rate in effect on the date of the determination is issued by CCC that a violation has occurred, plus 15 percent of the original MAL rate as provided on the note and security agreement.

(2) Did not act in good faith when the violation was committed, liquidated damages will be assessed in accordance with paragraph (d) of this section, and administrative actions will be taken in accordance with paragraph (h) of this section. The MAL is required to be redeemed at the rate at which the MAL was disbursed, plus interest and any other charges assessed under the note and security agreement.

(f) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as result of an incorrect certification, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the MAL which is equivalent to such quantity of the commodity. In the case of an incorrect certification, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed according to paragraph (d) of this section, and the commodity involved in the violation must be redeemed at the rate at which the MAL was disbursed, plus interest and any other charges assessed under the note and security agreement.

(2) Did not act in good faith about the violation, liquidated damages will be assessed in accordance with paragraph (d) of this section and administrative actions will be taken in accordance with paragraph (h) of this section. The MAL must be redeemed at the rate at which the MAL was disbursed, plus interest and any other charges assessed under the note and security agreement.

(g) If the producer fails to pay such amount within 30 days from the date of notification of violations as provided in paragraphs (e)(1) and (f)(1) of this section, the producer must immediately repay the MAL at the rate at which the MAL was disbursed plus interest, and any other charges assessed under the note and security agreement.

(h) For violations as specified in paragraphs (e)(2) and (f)(2) of this section, the producer must immediately repay the MAL at the rate at which the MAL was disbursed plus interest, and any other charges assessed under the note and security agreement. If the MAL has already been repaid, any market loan gain previously realized on the MAL, plus interest, is immediately due to CCC. CCC will demand delivery of any remaining MAL collateral if the MAL and any other charges and interest are not repaid within the 30 calendar day notification period specified in paragraph (g) of this section.

(i) If the county committee determines that the producer has committed a violation, the county committee will notify the producer in writing that:

(1) The producer has 30 calendar days to provide sufficient evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken.

(j) If the MAL is accelerated, the producer may not repay the MAL at the alternative loan repayment rate, unless authorized by CCC.

(k) Producers denied or rejected for a farm-stored MAL for any reason under this section may apply for a warehouse-stored MAL.

(l) The MAL plus other charges are payable to CCC upon demand if a producer:

(1) Makes any fraudulent representation in obtaining a MAL, maintaining, or settling a MAL; or

(2) Disposes or moves the MAL collateral without the approval of CCC.

(m) A producer is personally liable for damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous or harmful to humans or animals or property.

(n) If the amount disbursed under a MAL or in settlement of the MAL, exceeds the amount authorized by this part, the producer is liable for repayment of the excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the MAL is less than the amount required under this part, the producer is personally liable for repayment of the amount of such difference and charges, plus interest.

(p) In the case of joint MALs, the personal liability for the amounts specified in this section is joint and several on the part of each producer signing the note.

(q) Any or all of the liquidated damages assessed under this section may be waived if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

[67 FR 63511, Oct. 11, 2002, as amended at 68 FR 67939, Dec. 5, 2003; 71 FR 32424, June 6, 2006; 74 FR 15655, Apr. 7, 2009; 80 FR 124, 129, 130, Jan. 2, 2015]

§ 1421.110 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 lessor of:

(1) The loan rate and charges, plus interest applicable to the loan; or

(2) The prevailing world market price, as determined by CCC, or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.10.

(d) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office that disbursed the marketing assistance loan by:

(1) Completing a written request on the form or providing the information as required by CCC;

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral; or

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(e) Loan gains realized from a commodity certificate exchange are not subject to AGI provisions specified in part 1400 of this chapter.

[86 FR 70705, Dec. 13, 2021]

§ 1421.111 MAL settlement.

(a) The value of MALs at settlement will be determined by CCC on the following basis:

(1) For nonrecourse MALs, the schedule of premiums and discounts for the commodity, provided that if the value of the eligible delivered collateral at settlement is:

(i) Less than the amount due, the producer will pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) More than the amount due, the amount of such excess will be paid to the producer or, if applicable, to the producer and applicable secured creditors of the producer.

(2) For recourse MALs, full repayment of principal plus interest is required. As specified in § 1421.113, recourse MAL collateral may not be delivered or forfeited to CCC in satisfaction of indebtedness.

(3) If CCC sells the commodity described in paragraph (a)(1) and (a)(2) of this section in settlement of the MAL, the sales proceeds will be applied to the amount owed as follows:

(i) For nonrecourse MALs, CCC will in all instances retain all proceeds obtained from the sale of the eligible commodity and will not make any payment of any amount of such proceeds to any party, including the producer who has satisfied their obligation under the MAL through delivery of the commodity to CCC. CCC will settle

with the producer based on the quality and quantity of the commodity; or

(ii) For recourse MALs, the sales proceeds from the eligible collateral will be applied to the amount owed CCC by the producer. The producer will be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sale proceeds. If:

(A) The amount received from the sale of the collateral is less than the amount due, the producer will pay to CCC the amount of such deficiency and costs, plus interest on the remaining amount owed; or

(B) The amount received from the sale of the collateral is greater than the sum of the amount due, the amount of such excess will be paid to the producer or, if applicable, to the producer and applicable secured creditor of the producer.

(b) Settlements made by CCC for eligible commodities that are acquired by CCC and that are stored in an authorized warehouse will be made on the basis of the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(1) All eligible commodities that are stored in other than authorized warehouses must be delivered to CCC as CCC instructs. Settlement will be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an authorized warehouse, settlement will be made by CCC on the basis of the basic MAL rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(c) Settlements made by CCC for peanuts acquired by CCC and stored in an authorized warehouse will be based on the settlement value at the time of the loan disbursement and the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents subject to adjustments for changes in quality and other factors.

(1) All eligible commodities that are stored in other than authorized warehouses will be delivered to CCC as CCC instructs. Settlement will be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an authorized warehouse, settlement shall be made by CCC on the basis of the basic marketing assistance loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(d) For peanuts forfeited to CCC, the Secretary will pay reasonable storage, handling, and other associated costs for all peanuts pledged as collateral that are forfeited under this section.

(e) In all cases, settlements may be adjusted for changes in quality and other factors affecting the value of the commodity.

(f) Premiums and discounts will apply to all eligible loan commodities that are forfeited and delivered to CCC. There will not be any additional adjustments for peanuts at settlement, because such premiums and discounts will be accounted for when a peanut MAL is made.

(g) If a deficiency exists after the collateral securing a nonrecourse MAL has been delivered to CCC or a recourse MAL sold under a local sale, a receivable for such deficiency will be established as specified in part 1403 of this chapter.

(h) CCC will not assume any loss in quantity or quality of the loan collateral for any farm-stored MALs.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32425, June 6, 2006. Redesignated and amended at 74 FR 15655, Apr. 7, 2009; 80 FR 125, 129, 130, Jan. 2, 2015]

§ 1421.112 Foreclosure.

(a)(1) Upon maturity and nonpayment of a warehouse-stored MAL, title to the unredeemed collateral securing the MAL will immediately vest in CCC.

(2) Upon maturity and nonpayment of a farm-stored MAL, title to the unredeemed collateral will automatically transfer to CCC upon CCC demand.

(3) When CCC acquires title to the unredeemed collateral, CCC will not pay for any market value that such collateral may have in excess of the

MAL indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored MAL (the unpaid amount of the note plus charges, and interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto when, how, and upon terms as CCC determines. Disposition may also be affected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(1) The value of settlement for a farm-stored commodity removed by CCC from storage and will be as provided in § 1421.111.

(2) If a deficiency exists after the collateral is sold, a receivable for such deficiency will be established in accordance with part 1403 of this title.

[67 FR 63511, Oct. 11, 2002. Redesignated and amended at 74 FR 15655, Apr. 7, 2009; 80 FR 124, 130, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

§ 1421.113 Recourse MALs.

(a) CCC will make recourse MALs available to eligible producers of high moisture corn, high moisture grain sorghum, commodities that fall within acceptable levels of contamination and remain merchantable, and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

(b) Repayment is required to be paid in full at principal plus interest on or before the loan maturity date.

(c) Recourse MAL collateral may not be delivered or forfeited to CCC in satisfaction of the loan indebtedness.

[67 FR 63511, Oct. 11, 2002. Redesignated at 70 FR 33799, June 10, 2005. Redesignated and amended at 74 FR 15655, Apr. 7, 2009; 80 FR 126, 129, Jan. 2, 2015; 86 FR 70705, Dec. 13, 2021]

Subpart C—Loan Deficiency Payments

SOURCE: 67 FR 63511, Oct. 11, 2002, unless otherwise noted.

§ 1421.200 Applicability.

(a) During the MAL availability period, LDPs will be made available to eligible producers when the alternative repayment rate is less than the applicable county loan rate.

(b) To be eligible to receive LDPs a producer must:

(1) Comply with all MAL eligibility including beneficial interest requirements.

(2) Agree to forgo obtaining such MAL, if applicable; and

(3) File in person, by mail or electronically a request for payment on a form prescribed by CCC; and

(4) Otherwise comply with all program requirements.

(c)(1) A producer must submit to the FSA Service Center a completed request for a LDP on forms prescribed by CCC. This submission must be received on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Such completed and submitted forms indicate the producer's intentions and further provide the terms and conditions of the LDP program. If all or any of the provisions of this paragraph are not met by the producer, the producer may not obtain the LDP benefit.

(2) With respect to a request for a LDP for unshorn pelts, a completed request for such a payment must be submitted on or before the earlier of the date of slaughter of the lamb or the loss of beneficial interest in the lamb or the unshorn pelt produced from the lamb. In addition, the lamb must have been owned for not less than 30 days prior to the date such application is filed with CCC and must have been slaughtered for personal use, or sold for slaughter and slaughtered within 10 calendar days after the sale.

(d) For unshorn pelts, the lamb must be owned for a period of not less than 30 days in advance of the application and sold for immediate slaughter or slaughtered for personal use. Producers must submit acceptable production evidence to CCC under § 1421.12 at the time of request. Producers who do not sell lambs for immediate slaughter are ineligible for a LDP.

(e) AGI requirements apply as specified in part 1400 of this chapter.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32425, June 6, 2006; 74 FR 15655, Apr. 7, 2009; 80 FR 126, 129, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1421.201 Loan deficiency payment rate.

(a) The LDP rate for a crop will be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their MALs as specified in § 1421.10.

(b) The LDP rate will be the rate in effect in the county where the commodity was marketed or stored on the date:

(1) The request for benefits is received in the FSA Service Center, if the producer retains beneficial interest in the quantity on that date.

(2) Beneficial interest was lost, as determined by CCC and as provided in §§ 1421.6 and 1421.13, if on the date the request for benefits was received in the FSA Service Center the producer no longer has beneficial interest in the requested quantity.

(3) The commodity is delivered, if the producer elects to receive the LDP rate based on the date of delivery.

(c) The LDP applicable to such crop will be computed by multiplying the LDP rate, as determined under paragraph (b) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse MAL for which the LDP is requested.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32425, June 6, 2006; 71 FR 51426, Aug. 30, 2006; 74 FR 15655, Apr. 7, 2009; 80 FR 126, 130, Jan. 2, 2015]

§ 1421.202 Loan deficiency payment quantity.

(a) A LDP may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for LDP if such production evidence is provided for such commodity under § 1421.12.

(b) Two or more producers may obtain a single joint LDP for commodities that are stored in the same storage facility. Two or more producers may obtain individual LDPs for their share of the commodity that is stored commingled in a farm storage facility with commodities for which an LDP has been requested and will be liable for any damage incurred by CCC for incorrect certification of such commodities under § 1421.203.

(c) Two or more producers may obtain a single joint LDP for commodities that are stored in an authorized or unauthorized warehouse if the acceptable documentation representing an eligible commodity for which a LDP is requested is completed jointly for such producers.

[67 FR 63511, Oct. 11, 2002, as amended at 74 FR 15656, Apr. 7, 2009; 80 FR 126, 130, Jan. 2, 2015]

§ 1421.203 Personal liability of the producer.

(a) When a producer requests a LDP, the producer agrees:

(1) When signing the LDP Agreement and Request, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation, that CCC will rely upon when determining eligibility for a LDP; and

(2) That violation of the terms and conditions of the LDP request, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible. If CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages will be assessed on the quantity of the commodity that is involved in the violation.

(b) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the LDP.

(c) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed according to paragraph (b) of this section and the producer must repay the LDP applicable to the loan deficiency quantity involved in the violation and charges, plus interest

applicable to the amount repaid. If the producer fails to pay such amount within 30 days from the date of notification the producer must repay the entire LDP and any other charges plus interest.

(2) Did not act in good faith when the violation was committed, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer shall repay the entire LDP and any other charges plus interest.

(d) CCC may waive the liquidated damages assessed according to paragraph (b) of this section if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

(e) If, for any violation to which paragraph (b) of this section applies, the county committee determines that CCC's interest is not or will not be protected, the county committee will:

(1) Accelerate the maturity date on the producer's outstanding farm-stored MALs;

(2) Deny future farm-stored MALs for the current and 2 following crop years;

(3) Deny LDPs for the current and 2 following crop years unless production evidence is presented to CCC. Depending on the severity of the violation, the county committee may deny future farm-stored MALs and LDPs without production evidence.

(f) If the county committee determines that the producer has committed a violation, the county committee will notify the producer in writing that:

(1) The producer has 30 calendar days to provide sufficient evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative action will be taken under this section.

(g) If the amount disbursed under LDPs exceeds the amount authorized by this part, the producer is liable for repayment of such excess and liquidated damages, plus interest.

(h) In the case of joint LDPs, the personal liability for the amounts specified in this section is joint and several on the part of each producer signing the LDP application.

(i) Any or all of the liquidated damages assessed under the provisions of paragraph (b) of this section may be waived as determined by CCC.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32425, June 6, 2006; 74 FR 15656, Apr. 7, 2009; 80 FR 126, 130, Jan. 2, 2015]

Subpart D—Grazing Payments for Wheat, Barley, Oats, and Triticale

SOURCE: 66 FR 13404, Mar. 6, 2001, unless otherwise noted. Redesignated at 67 FR 63511, Oct. 11, 2002.

§ 1421.300 Applicability.

(a) The regulations in this subpart are applicable to the eligible acreage planted to wheat, barley, oats, or triticale that is grazed by livestock and not harvested in any other manner. This subpart specifies the terms and conditions under which a grazing payment will be made by CCC in lieu of an LDP.

(b) The form that is used in administering these payments is available in State and county FSA offices and will be prescribed by CCC.

[66 FR 13404, Mar. 6, 2001. Redesignated and amended at 67 FR 63511, 63523, Oct. 11, 2002; 74 FR 15656, Apr. 7, 2009; 80 FR 127, 130, Jan. 2, 2015]

§ 1421.301 Administration.

(a) This subpart will be administered by the FSA under the general direction and supervision of the Executive Vice President, CCC or designee. The program will be carried out in the field by State and county FSA employees under the general direction and supervision of the State and county FSA committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee will take any action required by this part which has not been taken by the county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs (DAFP), FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program. In addition, DAFP may establish other conditions for payments that will assist in achieving the goals of the program and may include such provisions in the program agreement or other program documents.

[66 FR 13404, Mar. 6, 2001, as amended at 80 FR 127, 130, Jan. 2, 2015]

§ 1421.302 Eligible producer and eligible land.

(a) To be an eligible producer for a payment under this subpart, the person must be a producer of wheat, barley, oats, or triticale in the applicable crop years. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in parts 12, 718, 1400, and 1405 of this title. A person will not be considered the producer of the crop unless that person was responsible for the planting of the crop and had control and title of the crop at all times, including, at the time of planting and the time of the request for a payment under, this subpart.

(b) A minor may participate in the program if the right of majority has been conferred on the minor by court order or by statute, or if the minor participates through a guardian authorized to act on the minor's behalf in these matters. Alternatively, a minor may participate if the program documents are all signed by an acceptable (to CCC) guarantor or if bond, acceptable to CCC, is provided by a surety.

(c) For the crop to be eligible, the crop, in addition to other standards that may apply, must be grown on land that is classified as ''cropland'' in FSA farm records or on land that FSA determines has been cropped in the last 3 years except that the land may also qualify if the land is committed to a crop rotation, normal for the locality, that includes harvesting the subject crop for grain. These rules are designed to assure, to the extent practicable, the available payment did not produce plantings that otherwise would not have occurred and the CCC may deny payments in any instance in which there is reason to believe that the planting was done for that purpose. To that end, if the commodity involved has not been previously grown by the producer or is not one which is not predominately produced locally, the producer must submit evidence of seed purchases for planting the commodities and other evidence deemed needed or appropriate by the COC in order to assure that the program goals are made and that the land was not planted to an eligible commodity simply to obtain a payment. Also, the land to be eligible must, for the year involved, be grazed and cannot, during the crop year, be harvested at any time for any purpose, except as determined by the Deputy Administrator to accommodate producers with a history of double-cropping when the crop to be harvested is not the crop for which a payment is to be made under this subpart. Land will be considered grazed only to the extent that the crop on the land is consumed in the field as live plants by livestock for the normal period of time for grazing in the area.

(d)(1) A producer must, at the time the LDP agreement is signed, meet all other eligibility criteria for obtaining LDPs including AGI requirements as specified in part 1400 of this chapter.

(2) For producers of triticale who obtain a payment under this subpart the producer must enter into an agreement with CCC to forgo any harvesting of triticale on the acreage for which such a payment is made.

(e)(1) No payment will be made if the crop could not have been harvested because of weather conditions or any other reason.

(2) The producer must retain the control and title of the commodity for which the payment is sought from the date of planting through the date on which mechanical harvesting of the crop would normally occur.

(f) Producers who elect to graze their wheat, barley, oats, or triticale will not be eligible for an indemnity under the Federal Crop Insurance Program provisions of Chapter IV of this title or a payment under the Noninsured Crop Assistance Program authorized under part 1437 of this chapter.

[66 FR 13404, Mar. 6, 2001. Redesignated and amended at 67 FR 63511, 63523, Oct. 11, 2002. Redesignated and amended at 74 FR 15656, Apr. 7, 2009; 80 FR 127, Jan. 2 2015; 86 FR 70706, Dec. 13, 2021]

§ 1421.303 Time and method for application.

(a) Application for the program provided in this subpart must be received, at the FSA county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would normally be harvested and no later than the final loan availability date as determined in accordance with § 1421.5.

(b) The application must describe the land to be grazed and, in accordance with standards set by CCC, the tract or field location.

(c) The COC will determine the first harvest date, taking into account the date on which such crops are normally harvested locally for any purpose.

(d) Where multiple producers are involved, the application must specify each producer's share in the crop.

(1) A producer may only receive payments under this subpart that are commensurate with that producer's share in the crop as specified on the application.

(2) Should a person who is entitled to receive a payment under this subpart die, that payment, as earned, may be made to other persons as provided for in the rules specified in part 707 of this title.

(3) Third parties may also receive payments to the extent provided for in part 707 of this title for other situations involving an incapacitation of the producer.

(e) Refusals to allow CCC to verify information on any application or report used for this subpart can result in program ineligibility and producers must provide CCC, FSA, and its agent access to the property involved and to all records as may be relevant to the making of payments under this subpart.

(f) False statements will disqualify the producer from the program and may be subject to other sanctions including criminal sanctions.

[80 FR 127, Jan. 2, 2015]

§ 1421.304 Payment amount.

(a) The grazing payment rate will be the LDP in effect for the farm on the date which the producer submits a complete program application to CCC. For triticale, the grazing rate will be equal to the LDP rate in effect for the predominant class of wheat in the county where the farm is located as of the date the application is filed.

(b) The payable units of production will be computed by multiplying the eligible grazed acres by the applicable yield determined under paragraph (c) of this section.

(c) The payment yield will be:

(1) The yield for the loan commodity on the farm in effect for the calculation of Price Loss Coverage as specified in part 1412 of this chapter;

(2) For a farm for which Agriculture Risk Coverage is elected, the payment yield that would otherwise be in effect for that loan commodity on the farm in the absence of such election as specified in part 1412 of this chapter; or

(3) In the case of a farm for which no payment yield is established for the loan commodity on the farm, an appropriate yield as determined by the COC.

(d) Payments can be withheld until the actual grazed acreage is verified and justified in connection with any other reports filed with FSA with respect to the farm (or filed with some other person or agency) and until all other necessary information is obtained. CCC may require such other verification as it deems appropriate to assure that the program goals are met.

(e) To receive the payment, the eligible producer must submit a request for payment on an application form as prescribed by CCC or FSA. The application may be obtained from the county FSA

office, or from the USDA or FSA web site in the Internet. The form must be submitted to the county by the close of business on or before March 31 of the calendar year following the year the crop is normally harvested.

(f) The producer will be ineligible for payments under this subpart if any discrepancies between the reported acreage on the program form and other reports of acreage by the producer are not resolved by a date set by CCC.

[66 FR 13404, Mar. 6, 2001. Redesignated and amended at 67 FR 63511, 63524, Oct. 11, 2002. Redesignated and amended at 74 FR 15656, Apr. 7, 2009; 80 FR 127, 130, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1421.305 Misrepresentation and scheme or device.

(a) A producer is ineligible to receive payments under this subpart if it is determined by DAFP, the State committee, or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this subpart to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the producer's actions, will be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and any person receiving payment under this subpart, as a result of such acts, will be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies which may apply.

[66 FR 13404, Mar. 6, 2001. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 127, 130, Jan. 2, 2015]

§ 1421.306 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this application, of this subpart, and if any refund of a payment to CCC becomes due for that or other reason in connection with the application, of this subpart, all payments made under this subpart to any producer are to be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1402 of this chapter.

(b) All persons listed on an application are jointly and severally liable for any refund due in connection with that application and for any related charges which may be determined to be due for any reason.

(c) Interest is applicable to refunds required from the producer. Interest will be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Interest will accrue from the date such benefits were made available to the date of repayment but the interest rate will increase to reflect any increase in the rate charged to CCC by Treasury for any percent of time for which the interest assessment is collected. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Late payment interest will be assessed on refunds in accordance with the provisions of, and subject to the rates in part 1403 of this chapter.

(e) Producers must refund to CCC any excess payments made by CCC with respect to any application in which they have an interest. Such refund will be subject to interest at the same rate that applies to other refunds.

[66 FR 13404, Mar. 6, 2001. Redesignated and amended at 74 FR 15656, Apr. 7, 2009; 80 FR 128, 130, Jan. 2, 2015]

Subpart E—Designated Marketing Associations for Peanuts

SOURCE: 70 FR 33799, June 10, 2005, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart E of part 1421 appear at 74 FR 15656, Apr. 7, 2009.

§ 1421.400 Applicability.

(a) This subpart specifies the terms and conditions under which an entity that is a DMA of peanut producers, or a subsidiary of such an entity, may qualify as a DMA, as defined in § 1421.3. DMAs may process peanut MALs and LDPs on behalf of producers.

(b) This subpart only applies with respect to peanut MALs and peanut LDPs.

[80 FR 128, Jan. 2, 2015]

§ 1421.401 DMA responsibilities.

(a) DMAs are eligible to process the MALs and LDPs provided for in this part only for peanut producers and only if the DMA and the producers and peanuts meet all eligibility criteria set out in this part, including, but not limited to, the DMA eligibility provisions of this subpart. In carrying out those functions, DMAs must:

(1) Prepare and execute the appropriate CCC peanut MAL and LDP application documents;

(2) Determine whether producers and the commodity are eligible for MALs and LDPs, including whether the otherwise eligible peanuts are free and clear of all liens which DMAs determine by performing lien searches at DMAs expense;

(3) Instruct the holder of EWRs, if applicable, to notify the EWR provider to amend the EWR to show CCC is the holder;

(4) Receive MAL and LDP documents from a DMA Service County Office;

(5) Disburse peanut MALs and LDP proceeds to eligible producers;

(6) Prepare and execute documents for MAL repayments;

(7) Collect MAL repayments from producers or buyers and transmit those funds to CCC;

(8) Transmit documents to render forfeited collateral to CCC; and

(9) Collect data for reporting to CCC as required by CCC;

(b) As part of performing the responsibilities in paragraph (a) of this section, DMAs:

(1) Become knowledgeable of and follow the procedures in CCC and FSA peanut MAL and LDP regulations, applicable notices published in the FEDERAL REGISTER, applicable FSA peanut program handbooks and amendments thereto, and any applicable notices or instructions issued by FSA and the Agricultural Marketing Service.

(2) Make and service CCC peanut MALs and LDPs, only upon the presenting by producers or their agents of the warehouse receipts, unless otherwise directed by CCC.

(3) Attend, at the DMAs expense, DMA peanut MAL, and LDP program training offered by CCC.

(4) Provide sufficient personnel, computer hardware, computer communications systems, and software, as determined necessary by CCC, to administer the peanut MAL and LDP program.

[70 FR 33799, June 10, 2005. Redesignated and amended at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.402 DMA eligibility to process MALs and LDPs.

(a) A DMA is eligible to process any MAL or LDPs only if approved in advance to handle such matters by the Farm Service Agency pursuant to this part; and

(1) The DMA meets the financial requirements and other requirements in this subpart and part;

(2) The DMA is comprised solely of peanut producers or is a subsidiary of an organization of peanut producers;

(3) The DMA is not controlled directly or indirectly by a person or entity that acquires peanuts for processing or crushing through a business involved in buying and selling peanuts or peanut products;

(4) The DMA does not take title at any time to any peanuts for which it processes MALs or LDPs, irrespective of whether such title is taken before or after those activities are performed. If such title or interest is taken, the DMA is required to return to CCC the full amount of the CCC proceeds disbursed with respect to the peanuts; and

(5) The DMA meets any additional requirements imposed by CCC or FSA.

(b) The DMA's activities under this part are to be conducted only with respect to peanuts and only for producers and peanuts that meet all the eligibility requirements of this part. Such requirements include, but are not limited to, the requirement of § 1421.6 that the producer must have the beneficial

interest in the peanuts while the peanuts are under MAL or when the LDP is received and must be the only person that has had such an interest in the peanuts prior to that time except as allowed by §1421.6.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.403 DMA approval.

(a) Entities wishing to apply to be a DMA enabled to perform MAL and LDP functions under this part for peanuts must submit an application for such approval to FSA in a form approved by CCC. That application will include the following:

(1) Two originals of a properly executed Designated Marketing Association agreement containing the terms and conditions prescribed by CCC.

(2) A financial statement of not less than 1 year old on the date submitted, including accompanying notes, schedules, or exhibits, certified by a certified public accountant as fairly representing the entity's financial condition.

(3) The entity's tax identification number.

(4) A copy of any applicable incorporating or partnership documents.

(5) The applicant entity's mailing address, electronic mail address, and telephone number and facsimile number.

(6) Any and all information requested by CCC regarding the DMAs materials, and equipment as CCC determines is necessary for the applicant to perform the services for which the approval to perform is sought.

(7) A narrative explaining how the proposed DMA entity or parent entity provides marketing services to peanut producers.

(8) Any additional information or financial security requested by the Agency.

(b) Applicants are responsible for notifying FSA when any changes occur to their operations requiring amendments to their application or supporting documents.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.404 Financial security.

(a) In order to be approved to handle MALs and LDPs, a DMA must:

(1) Have a current net worth ratio of at least 1:1; and

(2) Provide security equal to $100,000 or a greater amount as determined by CCC.

(b) [Reserved]

[80 FR 128, Jan. 2, 2015]

§ 1421.405 Liability.

(a) DMAs must indemnify CCC against any claim or loss by CCC in connection with the processing of any MALs or LDPs or other activity carried out by the DMA. If CCC pays any claim or suffers a loss as a result of the actions of DMA, or if a refund otherwise becomes due to CCC, payment in the amount of such losses or refund, plus interest, may be set-off by CCC from the financial security provided by DMA as required by this subpart. If the amount of the loss exceeds the amount of the financial security, such amount is paid to CCC by DMA with interest. Interest and other charges may be assessed consistent with §1403.9 of this chapter. Remedies provided in this section or part are in addition to other remedies or penalties, whether civil, criminal or otherwise, as may apply.

(b) If a DMA becomes liable to CCC under paragraph (a) of this section or otherwise in connection with this subpart, such DMA is not eligible to process an LDP or MAL until the receivable amount owed CCC is paid in full, and the full amount of financial security required by this subpart has been restored.

[80 FR 128, Jan. 2, 2015]

§ 1421.406 Reporting requirements.

(a) *Report of changes.* A DMA must furnish information to CCC within thirty calendar days relating to any substantial change in the DMA operations including but not limited to the following:

(1) A change in its articles of incorporation;

(2) A resolution affecting MAL or LDP operations.

(3) A change to the DMAs name, address, phone number, or related information on the DMA agreement.

(b) *Other Information.* The DMA must supply such additional information as CCC may request related to the DMAs continued approval by CCC to process MALs and LDPs under the authority provided in this subpart.

(c) *CCC request for information.* CCC may require a DMA to submit updated information, a new application, or a request for recertification whenever CCC becomes aware of any changes or has any reason to be uncertain that the DMA is operating in a manner that is consistent with the information already submitted, or consistent with this part.

(d) *Annual recertification.* Within 4 months after the end of the DMAs fiscal year, a DMA must submit the following information to CCC:

(1) A current financial statement prepared according to generally accepted accounting principles;

(2) A report of audit or review of the financial statement conducted by an independent Certified Public Accountant. The accountant's report of audit or review must include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statements.

(3) Additional financial security as determined by CCC, if the financial security on file with CCC does not meet current requirements or has expired.

(4) A report of changes as required under paragraph (a) of this section.

(e) *Activity report.* DMAs must provide CCC reports of MAL and LDP volume and benefit earnings made by the DMA for individual producers, and gains received on behalf of each peanut producer, in a format as directed by CCC.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.407 Suspension and termination.

(a) *Suspension.* If CCC determines that a DMA is not in compliance with the DMA agreement CCC may suspend the DMA from making peanut MALs and LDPs until the DMA corrects the violation, or longer.

(b) *Termination.* The DMA agreement may be terminated by the DMA upon 30 calendar days' written notice to CCC. CCC may cancel the agreement at any time. Upon termination DMA must immediately cease processing MAL or LDP requests and documents except as needed to preserve CCC's position with respect to existing MALs or LDPs.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.408 Prohibited activity.

(a) DMAs approved to handle MALs and LDPs under this subpart may not:

(1) Discriminate against or deny any producer from receiving MALs or LDPs because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status for which they would otherwise be eligible under the statutes regulating the MAL and LDP program.

(2) Pool peanuts for the purpose of obtaining peanut MALs or LDPs from CCC.

(3) Pool the proceeds obtained from peanut MALs or LDPs made by CCC.

(4) Process farm-stored certified or measured MALs or LDPs unless authorized by CCC.

(5) Take title to any peanuts.

(6) Operate the DMA under the same entity and tax identification number of a CCC-approved CMA.

(7) Refuse services to producers because the DMA was not granted a power of attorney for purposes of executing MAL documents to obtain MALs for the producer, repaying the MAL for the producer, obtaining LDPs for the producer, or marketing the producer's peanuts.

(8) Adopt any scheme or device to circumvent the purpose of the peanut MAL and LDP program regulations, the regulation governing DMAs, or the DMAs agreement with CCC.

(9) Process MALs or LDPs for producers involved in a bankruptcy proceeding unless authorized by CCC.

(10) Process MALs or LDPs on ineligible peanuts.

(b) If the prohibitions of this section are violated FSA or CCC may take one or more of the actions authorized in this part or otherwise authorized.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 128, Jan. 2, 2015]

§ 1421.409 Monitoring AGI.

DMAs are required to monitor their producers' AGIs and may not permit repayments with a market loan gain on peanut MALs or process peanut LDPs for those producers with annual AGI over the allowable limit as specified in part 1400 of this chapter.

[86 FR 70706, Dec. 13, 2021]

§ 1421.410 Recordkeeping requirements.

A DMA must maintain producer MAL and LDP paper documents and electronic records for an indefinite period unless otherwise notified by CCC.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, Jan. 2, 2015]

§ 1421.411 Forms.

For purposes of conducting business related to this part, a DMA may use either current CCC forms or other forms approved by CCC. A DMA may perform functions under this part only when approval has been obtained by CCC.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, Jan. 2, 2015]

§ 1421.412 Powers of attorney.

DMAs may hold a power of attorney from a producer allowing the DMA to sign MAL and LDP documents for the producer, but DMAs may obtain and hold such powers only in accordance with the requirements of CCC governing such powers.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.413 Liens and waivers.

(a) DMAs performing MAL-related functions pursuant to the authority in this subpart must determine, to the same extent as required for MALs handled by FSA county offices, whether a lien on the peanuts exists by performing or obtaining a lien search for all peanuts to be pledged for each MAL, except that the cost associated with such lien search and any necessary lien waivers is borne by the DMA. If a lien exists, the DMA must obtain, on an approved CCC form, a signed waiver from each lienholder with an interest in any such lien.

(b) [Reserved]

[80 FR 129, Jan. 2, 2015]

§ 1421.414 Producer request to a DMA for an MAL or LDP.

Peanut producers or their authorized agent may request that an MAL or LDP be processed by a DMA only if the DMA is approved under this subpart to process such a request and only if the producer supplies to the DMA:

(a) *Beneficial interest information.* Beneficial interest must be maintained by the producer according to §1421.6 for the peanuts to be eligible for MAL or LDP; accordingly, the producer must supply to the DMA such information as it needed to make that determination.

(b) *Warehouse receipts and lien information.* Producers must supply for all peanuts either individual paper warehouse receipts in the producer's name or an electronic warehouse receipt (EWR) number and provider's name. Producers must supply relevant lien information regarding the peanuts; however, the producer's obligation in this regard does not relieve the DMA from making the appropriate lien search.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

§ 1421.415 Processing marketing assistance loans.

(a) DMAs must take the following actions in the following order when an application for an MAL is filed:

(1) Make all the determinations that are a precondition for a MAL, including all producer eligibility requirements, lien determinations, and if requested by the producer, enter into a power of attorney agreement with the producer.

(2) If there is an EWR for the peanuts, instruct the current holder to notify the EWR provider to amend the EWR to show the DMA as holder. If a paper receipt is involved, the DMA must obtain the receipt (and later, at the appropriate time include the receipt in the documents delivered to the CCC).

(3) Complete all MAL forms.

(4) After the producer or the person holding the power of attorney for the producer signs MAL document, provide

the signatory with copies of the documents.

(5) Where there is an EWR for the peanuts notify the EWR provider to make CCC the holder of the EWR and secure an affirmation verifying that CCC has been made the holder of the EWR.

(b) [Reserved]

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, Jan. 2, 2015]

§ 1421.416 Processing loan deficiency payments.

(a) DMAs must take the following actions in the following order when an application for an LDP is filed:

(1) In addition to other determinations that are required, the DMA must determine whether the producer exceeds the AGI limits to allow the receipt of the LDP. If the producer is over the AGI limit the DMA cannot process the request.

(2) If EWRs are applicable for the peanuts for which the LDP is sought, the DMA must instruct the current holder to notify the EWR provider to amend the EWR to show that the peanuts were used to obtain an LDP;

(3) The DMA must insure that the producer or the person holding the power of attorney for the producer signs the LDP documents; and

(4) If the peanuts and the producer are eligible for the MAL and all other conditions have been met, the DMA may disburse funds to the producer subject to the time limits set out elsewhere in this part.

(b) The LDP rate applicable to the LDP request will be the rate in effect on the date the DMA receives the request except as may otherwise be provided for in this part.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1421.417 Disbursing MAL and LDP proceeds.

(a) A DMA may request that CCC establish a drawdown account from which to disburse MAL and LDP amounts to producers and designate the financial institution they wish to use.

(b) CCC will determine whether a drawdown account is justified and the amount of the account.

(c) If there is no drawdown account, MAL and LDP proceeds are to be distributed to the producer within 3 work days from the date the DMA receives MAL or LDP proceeds from CCC, after deduction of authorized charges or fees for services. If there is a drawdown account, the MAL and LDP proceeds are to be distributed to the producer within 3 days of the completion of the application.

(d) The DMA is to assess charges and fees at the same rate for each producer that it serves.

(e) If a drawdown account is used, CCC will replenish the amount as necessary as it is drawn down.

(f) The DMA must notify CCC of the actual date on which the MAL is disbursed.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, 130, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1421.418 Submitting MAL and LDP documentation to FSA.

(a) Until such time as an alternative FSA MAL- or LDP-making system is made available to DMAs, within 3 business days of any DMA prepared disbursement, the DMA must separately group and submit to FSA:

(1) MALs with the same disbursement date, peanut type, warehouse code, and State where peanuts were inspected; and

(2) LDPs with the same LDP rate, approval date, and peanut type.

(b) Each of the groups identified in paragraph (a) of this section must be submitted to FSA with the following documents:

(1) Individual paper warehouse receipts or EWR numbers, and the EWR provider's name representing the bundled MALs or LDPs.

(2) A form to itemize receipts, and other data, as required, or a pre-processed electronic file containing data required by FSA.

(c) FSA may process each DMA prepared MAL or LDP group for the volume of peanuts on multiple receipts as one MAL or LDP, waive the service fee to the DMA, and either hold MAL paper warehouse receipts, or verify

that CCC is holder of the EWRs as of the date of disbursement.

(d) In the case of an MAL, if CCC was not the holder of the EWR on or before the date the DMA prepared MAL was disbursed, the applicable receipts will be rejected, and funds will not be distributed to the DMA drawdown account until CCC becomes the holder of the EWR.

(e) If MAL and LDP documentation is acceptable, FSA will disburse MAL or LDP funds to the DMA, with appropriate supporting documentation.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009; 80 FR 129, 130, Jan. 2, 2015]

§ 1421.419 MAL or LDP servicing.

(a) The DMA is responsible for servicing MALs and are required to take the following actions:

(1) Send the producer a maturity notice letter before MAL maturity.

(2) Maintain the MAL or LDP documents according to FSA requirements.

(3) Transmit the necessary funds to repay the MAL to FSA.

(b) FSA will process the CCC release of paper receipts or EWRs where such a release is appropriate.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009;80 FR 129, 130, Jan. 2, 2015]

§ 1421.420 Inspections and reviews.

The books, documents, papers, and records of the DMA and parent company must be maintained for 6 years after the applicable crop year and be made available to CCC for inspection and examination at all reasonable times. At any time after an application is received, CCC has the right to examine all books, documents, papers, and determine whether the DMA is operating or has operated in accordance with the regulations in this part, any articles of incorporation, articles of association, partnership documents, agreements with producers, the representations made by the DMA in its application for approval, and, where applicable, its agreements with CCC. If the DMA is determined to be not complying with this part or any of its agreements, CCC will take appropriate action as provided in elsewhere in this subpart or other action CCC determines appropriate.

[80 FR 129, Jan. 2, 2015]

§ 1421.421 Appeals.

Parts 11 and 780 of this title apply to this subpart.

[70 FR 33799, June 10, 2005. Redesignated at 74 FR 15656, Apr. 7, 2009]

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

Sec.

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1423.13 Appeals, suspensions, and debarment.

AUTHORITY: 15 U.S.C. 714b and 714c.

SOURCE: 71 FR 35773, June 22, 2006, unless otherwise noted.

§ 1423.1 Applicability.

(a) This part sets forth the terms and conditions for approval of a warehouse operator by the Commodity Credit Corporation (CCC) to store and handle CCC interest commodities, which are owned by CCC and, as may be required under parts 1421, 1427 and 1435 of this title, with respect to commodities pledged as security for a loan made by CCC. CCC may require that a warehouse enter into a storage agreement under this part to store such commodities. The execution of such a storage agreement by CCC does not constitute a commitment that CCC will use the warehouse.

(b) By entering into a storage agreement with CCC, the warehouse operator agrees to comply with the terms and conditions of the storage agreement.

§ 1423.2 Administration.

On behalf of CCC, the Agricultural Marketing Service (AMS) will administer this part under the supervision of the AMS Administrator.

[84 FR 29033, June 21, 2019]

§ 1423.3 Definitions.

Active shipping order means an early shipping order or shipping order, as defined in this section, scheduled for a current cotton warehouse reporting week or for a prior reporting week, but not picked up.

Agreement means agreements covering storage and handling of any such commodity CCC may determine appropriate for storage.

Early shipping order means a list of bale tag numbers sent to a cotton warehouse operator without transfer of warehouse receipts.

Shipping order means a list of bale tag numbers sent to a cotton warehouse operator accompanied by transfer of warehouse receipts.

Warehouse means a building, structure, or other protected enclosure, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

Warehouse operator means an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity.

[71 FR 35773, June 22, 2006, as amended at 75 FR 50849, Aug. 18, 2010; 84 FR 29033, June 21, 2019]

§ 1423.4 General requirements.

(a) Unless otherwise provided in this part, approved warehouse operators must maintain a current and valid license for the kind of storage operation for which the warehouse operator seeks approval if such a license is required by State or local laws or regulations and maintain accurate and complete inventory and operating records.

(b) Approved warehouse operators may only use pre-numbered warehouse receipts, or pre-assigned ranges of numbers for electronic warehouse receipts as set forth in the agreement, and may only use pre-numbered scale tickets, if applicable, as CCC may approve.

(c) In addition, the warehouse operator must:

(1) Be in compliance with state and local laws regarding fire safety;

(2) Furnish a copy of any written lease agreement to CCC with the application. All leases are subject to CCC approval; and

(3) Have sufficient employees and management with technical qualifications and skills in the warehousing business regarding the commodities subject to the agreement.

(d) Unless otherwise provided in this part, each approved warehouse shall:

(1) Be maintained under the control of the warehouse operator;

(2) Be maintained in a good state of repair; and

(3) Maintain adequate equipment to receive, handle, store, preserve and deliver the applicable commodity.

§ 1423.5 Application requirements.

To apply for approval under this part, a warehouse operator shall submit to CCC the following:

(a) An application as prescribed by CCC for the applicable commodity storage agreement;

(b) Evidence of compliance with § 1423.4;

(c) Current financial information sufficient to meet the requirements of § 1423.6;

(d) For State licensed or non-licensed warehouse operators, a sample copy of the warehouse operator's warehouse receipts or electronic warehouse receipt record descriptor when applicable; and

(e) Such other documents or information as CCC may require to make a determination that the warehouse operator can comply with the provisions of this part.

§ 1423.6 Financial information documentation requirements.

To be approved under this part, a warehouse operator shall submit a current financial statement at the time of application, and annually thereafter, as provided for in the applicable storage agreement.

§ 1423.7 Net worth alternatives.

Warehouse operators with net worth equal to or greater than the minimum net worth required, but less than the total net worth for the commodity involved in the particular agreement, may satisfy the net worth deficiency by furnishing one of the following:

(a) A bond which:

(1) Is executed by a surety approved by the U.S. Department of the Treasury so long as the surety maintains someone authorized to accept service of legal process in the State where the warehouse is located.

(2) Is executed on either a bond form obtained from CCC, or which is furnished under State law or operational rules for non-governmental supervisory agencies, if approved by CCC, so long as CCC determines that such alternative bond:

(i) Provides adequate protection to CCC;

(ii) Has been executed by a surety approved by the U.S. Department of the Treasury or has an acceptable blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond; and

(iii) Is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. Excess coverage on a bond for one warehouse will not be accepted by CCC against insufficient bond coverage on other warehouses;

(b) Cash and negotiable securities. Any such cash or negotiable securities accepted by CCC will be returned to the warehouse operator when the period for which coverage was required has ended and CCC determines there is no liability under the storage agreement;

(c) An irrevocable letter of credit meeting CCC requirements that is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. The issuing bank must be a commercial bank insured by the Federal Deposit Insurance Corporation or a financial institution subject to the Farm Credit Act; or

(d) Other alternative instruments and forms of financial assurance as the AMS Administrator determines appropriate to secure the warehouse operator's compliance with this section.

[71 FR 35773, June 22, 2006, as amended at 84 FR 29033, June 21, 2019]

§ 1423.8 Approval or rejection.

(a) CCC will notify warehouse operators approved under this part in writing. Such approval does not relieve the warehouse operator of any obligation under any agreement to CCC or any other agency of the United States, and does not obligate CCC to use the warehouse.

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the causes for rejection. CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the AMS Administrator. Appeals shall be as prescribed in part 780 of this title.

[71 FR 35773, June 22, 2006, as amended at 71 FR 42017, July 25, 2006; 84 FR 29033, June 21, 2019]

§ 1423.9 Examination of warehouses.

Before approval, and while a storage agreement is in effect, a warehouse must be examined by a person designated by CCC periodically to determine compliance with this part. CCC or any other agency of USDA shall, at any time, have the right to inspect the warehouse storage facilities and any applicable records. Inspection or examination by CCC does not absolve the warehouse operator of any failure to comply with this part that CCC does not discover. Failure to allow access to facilities as required under this paragraph will result in rejection or revocation of approval.

§ 1423.10 Exceptions for United States Warehouse Act licensed warehouses.

The financial requirements, net worth alternatives and examination provisions of this part do not apply if the warehouse operator is licensed under the U.S. Warehouse Act (USWA) for such commodities, but an examination under this part will be made of such a warehouse whenever CCC determines such action is necessary to protect its interests.

§ 1423.11 Delivery and shipping standards for cotton warehouses.

(a) Unless prevented from doing so by severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, acts of civil or military authority, non-availability of transportation facilities or any cause beyond the control of the warehouse operator that renders performance impossible, the warehouse operator will:

(1) Deliver stored cotton without unnecessary delay.

(2) Be considered to have delivered cotton without unnecessary delay if the warehouse operator has made available for shipment at least 4.5 percent of its applicable storage capacity in effect, measured as the bales made available for shipment (BMAS):

(i) During the relevant week of shipment; or

(ii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately preceding week; or

(iii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately succeeding week.

(b) The warehouse operator shall provide a written report to CCC on a weekly basis. The reporting week shall be the seven day period starting at midnight following the close of business on each Saturday and ending at midnight after close of business of the following Saturday. Before close of business of the first business day of the following week, the warehouse operator will provide following information to CCC:

(1) BMAS during such week is defined as any cotton bales that have been delivered or are scheduled and ready for delivery but not picked up during such week;

(2) Active shipping orders, by week; and

(3) Applicable storage capacity that is the higher of CCC approved capacity or the maximum number of bales stored at any time during the applicable crop year.

(c) The warehouse operator may resolve any claim for noncompliance from any entity other than CCC with the cotton shipping standard in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. In no case will CCC provide assistance or representation to parties involved in arbitration proceedings arising with respect to activities authorized under the Cotton Storage Agreement.

[71 FR 51426, Aug. 30, 2006, as amended at 79 FR 70997, Dec. 1, 2014; 84 FR 29033, June 21, 2019]

§ 1423.12 Application, inspection, and annual agreement fees.

Each warehouse operator not licensed under USWA shall pay to CCC a fee or fees, including an application fee, inspection fee, and an annual agreement fee for each warehouse approved by CCC or for which approval is sought. The terms and conditions of such fees will be set forth in the applicable agreement.

§ 1423.13 Appeals, suspensions, and debarment.

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the AMS Administrator. Appeals shall be as prescribed in part 780 of this title, and under such regulations the warehouse operator shall be considered as a ''participant.''

(b) Suspension and debarment actions taken under this part shall be conducted in accordance with part 1407 of this chapter. After expiration of the suspension or debarment period, a warehouse operator may, at any time, apply for approval under this part.

[71 FR 35773, June 22, 2006, as amended at 84 FR 29033, June 21, 2019]

PART 1424—BIOENERGY PROGRAM

Sec.
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1424.13 Misrepresentation and scheme or device.
1424.14 Offsets, assignments, interest and waivers.

AUTHORITY: 7 U.S.C. 8108, 15 U.S.C. 714b and 714c.

SOURCE: 68 FR 24600, May 7, 2003, unless otherwise noted.

§ 1424.1 Applicability.

This part sets out regulations for the Bioenergy Program (program). It sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions a bioenergy producer must meet to obtain payments under this program and part from the Commodity Credit Corporation (CCC) for eligible bioenergy production. Additional terms and conditions may be set forth in the document required to request program benefits and in the program contract or agreement prescribed by CCC. This program is effective October 1, 2002, through September 30, 2006.

§ 1424.2 Administration.

This part shall be administered by the Executive Vice President, CCC, under the general direction and supervision of the Executive Vice President or designee. The Executive Vice President or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program, and may set such additional requirements as will facilitate the operation of the program. The funds available for the program shall be limited as set by this rule, otherwise announced by the Executive Vice President, CCC, or limited by law.

§ 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the Bioenergy Program Agreement or other form prescribed by CCC that must be executed for participation in the program.

Application means the application form prescribed by CCC or another form that contains the same terms, conditions, and information required.

ATF means the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Base production means a biodiesel producer's current FY's biodiesel production from eligible commodities that is not an increase over biodiesel production in the previous FY to date.

Biodiesel means a mono alkyl ester manufactured in the United States and its territories that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Biodiesel producer means a producer that produces and sells biodiesel who is also registered and in compliance with section 211 (b) of the Environmental Protection Agency Clean Air Act Amendment of 1990.

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Conversion factor means:

(1) For ethanol production, a factor that converts the number of ethanol gallons back to commodity units as determined in the manner announced by CCC;

(2) For biodiesel production, the factor that will treat 1.4 gallons of biodiesel produced as having involved the consumption of one bushel of soybeans in any case when the feedstock was an eligible commodity that has a corresponding oil or grease market price; if there is none, then the factor shall be as determined and announced by CCC.

Eligible commodity means barley; corn; grain sorghum; oats; rice; wheat; soybeans; cotton seed; sunflower seed; canola; crambe; rapeseed; safflower; sesame seed; flaxseed; mustard seed; cellulosic crops, such as switchgrass and hybrid poplars; fats, oils, and greases (including recycled fats, oils and greases) derived from an agricultural product; and any animal byproduct (in addition to oils, fats and greases) that may be used to produce bioenergy, as CCC determines, that is produced in the United States and its territories.

Eligible producer means a bioenergy producer who meets all requirements for program payments.

Ethanol means anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a facility and in a manner approved by ATF for the production of ethanol for fuel; or

(2) As denatured ethanol used by blenders and refiners and rendered unfit for beverage use.

Ethanol producer means a person authorized by ATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means the fiscal year beginning each October 1 and ending September 30 of the following calendar year.

KCCO means the FSA, Kansas City Commodity Office.

Posted County Price means the same Posted County Price for different locations as is used under other CCC commodity programs for marketing loan gains and other matters.

Producer is a legal entity (individual, partnership, cooperative, or corporation, etc.) who is a commercial bioenergy producer making application or otherwise involved under this program.

Quarter means the respective time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

Sign-up period means the time period announced by CCC during which CCC will accept program agreements.

USDA means the United States Department of Agriculture.

§ 1424.4 General eligibility rules.

(a) An applicant must be determined eligible by KCCO and be assigned an agreement number.

(b) To be eligible for program payments, a producer must maintain records indicating for all relevant FY's and FY quarters:

(1) The use of eligible commodities in bioenergy production;

(2) The quantity of bioenergy produced from an eligible commodity by location;

(3) The quantity of eligible commodity used by location to produce the bioenergy referred to in paragraph (b)(2) of this section; and

(4) All other records, needed, or required by the agreement to establish program eligibility and compliance.

(c) A producer must allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a producer being determined not eligible.

(d) For producers not purchasing raw commodity inputs, the production must equal or exceed that amount of production that would be calculated using the raw commodity inputs and the conversion factor set out in § 1424.3. A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction both soy oil purchases and biodiesel production for the applicable quarter. Any special conversion factors needed will be the province of CCC and CCC alone and CCC's decision will be final.

(e) A producer must meet all other conditions set out in these regulations, in the agreement, or in other program documents.

§ 1424.5 Agreement process.

(a) To participate, an eligible producer must submit a signed agreement

during the FY sign-up period. Agreements may be for single or multiple FY's. However, multiple FY agreements require producers to submit annual production estimate reports during each applicable FY sign-up period. Such reports must comply with the terms of the agreement and this part. In all cases, the accounting for compliance will be made on a per FY basis.

(b) Sign-up each FY will be held for 30 calendar days beginning for:

(1) FY 2003 on the date of publication of this rule;

(2) FY 2004 and beyond on August 1 of the FY before the applicable FY.

(c) After agreements are submitted:

(1) If determined eligible by KCCO, an agreement number will be assigned, and a notification will be mailed to the producer;

(2) If additional information is needed for KCCO to determine eligibility, the producer will be contacted as soon as practicable and requested to provide additional supporting documentation;

(3) If determined ineligible by KCCO, producers will be notified in writing that their agreement was rejected and the reason for the determination.

§ 1424.6 Payment application process.

(a) To apply for payments under this program during an FY, an eligible producer must:

(1) Submit an application or eligibility report for each quarter. Submit the last quarterly application or report of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(2) Certify with respect to the accuracy and truthfulness of the information provided;

(3) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by CCC of both the producer's net purchases of eligible commodities and net production of bioenergy compared to such production at all locations during the relevant periods. CCC may adjust the formulaic payments otherwise payable to the producer if there is a difference between the amount actually used and certified and the amount of increased commodity use calculated under the formula.

(b) After applications or reports are submitted, eligible producers:

(1) Shall submit such additional supporting documentation as requested by KCCO when additional information is needed to determine eligibility;

(2) Will be notified in writing of their ineligibility and reason for the determination, when the application is determined ineligible by KCCO; and

(3) Shall promptly refund payments when a refund to CCC is due. If a refund is not made promptly, CCC may establish a claim.

§ 1424.7 Gross payable units.

(a) For ethanol, producers will be eligible for payments on gross payable units for only their ethanol production from eligible inputs that exceeds, for the program year to date, their total comparable production at all locations as compared to the comparable portion of the previous year. Producers of ethanol are not eligible for base production payments. Producers shall not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund. For example, if at the end of the first quarter, a producer were to be paid for an increase of 500 gallons of ethanol, but at the end of the second quarter, that producer's year-to-date production was down to a net increase for the year of 450 gallons, then a refund would be due for the loss of the corresponding 50 gallons of net extra production. Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, the extra ethanol production from eligible inputs will be converted to gross payable units by dividing the gallons of increased ethanol by the applicable conversion factor.

(b) Biodiesel producers will be eligible for payments on gross payable units for all biodiesel production from eligible inputs. For eligibility purposes there will be two kinds of payment: additional production payments (APP), and base production payments (BPP). Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, gross payable units

for biodiesel production from eligible inputs will be calculated as follows:

(1) For APP, by dividing the gallons of increased biodiesel by the biodiesel conversion factor of 1.4. APP payments will be made on increases as compared with the previous FY. Producers will not be paid twice for the same production. Failure to maintain year to date biodiesel production increases between quarters will require a comparable APP refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for 500 gallons of increased biodiesel production, but by the end of the second quarter that producer's production, for the year to date, was only 450 gallons, then a refund of the APP premium would be due for the loss of the corresponding 50 gallons of net production increase.

(2) For BPP, which will be made on production not eligible for the APP, by dividing the base production by the biodiesel conversion factor of 1.4 and multiplying the result by 0.5 in FY 2003, 0.3 in FY 2004, 0.15 in FY 2005, or 0.0 (zero) in FY 2006 to determine base biodiesel production gross payable units.

(3) Adding the APP and BPP to determine biodiesel gross payable units.

(c) There shall only be one eligible producer per plant location.

(1) When producers move production from one plant to another between FY's, the prior FY's production for the producer for program payment calculations tied to increases in production shall be the greater of:

(i) The production at the plant operated by the producer in the prior FY, or

(ii) The production in the prior FY at the plant being taken over by the producer in the current FY.

(2) New producers who are taking over a plant with prior bioenergy production shall assume that production history for program purposes. For example: in FY 2002, Producer A produced 1,000 gallons of bioenergy in plant 1 and Producer B produced 500,000 of bioenergy in plant 2. In FY 2003, Producer A assumes operation of plant 2; Producer B moves to plant 3, which was not in the program in FY 2002, but with FY 2002 production of 400,000 gallons from eligible commodities; and Producer C assumes operations of plant 1. In FY 2003, for program purposes solely based on these respective plants, Producer A would have a prior FY production of 500,000 gallons; Producer B would have a prior FY production of 500,000 gallons; and Producer C would have a prior FY production of 1,000 gallons. These examples would apply when a producer moves its entire operation from one plant to another. Otherwise, for purposes of computing whether a producer has increased production in the current year from the previous year, the determination will be made by comparing for the current year the producer's production figures from all locations in which the producer has an interest with, for the previous year, the sum of:

(i) Production at those locations by any person including, but not limited to, the producer, and

(ii) Additional production by the producer at any other location in that year.

(3) Also, as needed to avoid frustrating the goals of the program, the Executive Vice President of CCC may treat producers with common interests, common ownership, or common facilities or arrangements as the same producer.

§ 1424.8 Payment amounts.

(a) An eligible producer may be paid the amount specified in this section, subject to the availability of funds. Total available funds shall be as determined appropriate by CCC and shall not exceed $150 million in any of FY's 2003 through 2006.

(b) For agreements submitted during an FY sign-up, applicants must project increases in production. Based on expected commodity prices, using the formula set out in this section, submissions will be assigned an expected payment value. When the payment value of all timely submitted and validly executed agreements exceed available funding, CCC may, at its discretion, prorate payments to be made under such agreements based on total available funding.

(c) When the payment value of all timely submitted applications exceed available funding, CCC will prorate

payments based on total available funding.

(d) Subject to this section and conditions in the agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and calculated as follows:

(1) Gross payable units, calculated and determined in accordance with §1424.7, shall be converted to net payable units for producers whose annual bioenergy production is:

(i) Less than 65 million gallons, by dividing by 2.5;

(ii) Equal to or more than 65 million gallons, by dividing by 3.5;

(2) Net payable units calculated under paragraph (d)(1) of this section shall then be converted to a gross payment by multiplying net payable units by the per-unit value of the commodity as of the 10th business day before the start of the production quarter, determined as follows:

(i) For ethanol:

(A) For those agricultural commodities with an established Posted County Price, CCC will use the Posted County Price that CCC announces daily for the county in which the plant is located and applicable quality factors as CCC may establish.

(B) For agricultural commodities that CCC determines do not have Posted County Prices, CCC will use market data CCC determines to be appropriate for the applicable commodity.

(ii) For biodiesel made from:

(A) Soybeans or soy oil, CCC will use the Posted County Price for soybeans for the county where the plant is located.

(B) Eligible commodities other than soybeans or soy oil that have a corresponding oil or grease market price, CCC will first use the soybeans Posted County Price for Macon County, Illinois. Then, the applicable feedstock's oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service's weekly ''Soybean Crush Report'' (Central Illinois (Decatur, Macon County, Illinois)) for the applicable date. The resulting percentage will be multiplied by the soybean gross payment to determine the producer's gross payment.

(C) Eligible commodities that do not have a corresponding oil or grease market price, in a manner as determined by CCC.

(3) The gross payment calculated under paragraph (d)(2) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (c) of this section.

(4) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the quarter, subject to the requirements and refund provisions of this part.

(5) After the first quarter, adjustments shall be made based on changes in production. Refunds, when due, shall be due at the per unit values at which they were paid.

(6) For an FY, no producer may receive more than 5 percent of the available funding for this program.

(e) When the commodity's conversion factor has been established, that factor will, as practicable, be posted on the program's website.

(1) If the commodity's conversion factor is not determined when the sign-up is announced, the conversion factor will be provided in a letter to producers with accepted agreements to the extent practicable.

(2) After FY 2003, changes to established conversion factors shall be announced in a press release issued by CCC 90 calendar days before the applicable FY's sign-up, to the extent practicable.

§1424.9 Reports required.

Once an eligible producer has submitted a payment application, that producer shall file cumulative and per-plant information for each relevant bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC or as otherwise needed to establish compliance with this part.

§1424.10 Succession and control of facilities and production.

A person who obtains a facility that is under contract under this part may request permission to succeed to the program agreement and CCC may grant such request if it is determined that permitting such succession would serve

the purposes of the program. If appropriate, CCC may require the consent of the original party to such succession. Also, CCC may terminate a contract and demand full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than three years from the payment date.

§ 1424.12 Appeals.

(a) A participant subject to an adverse determination under this part may appeal by submitting a written request to: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250–0550. The appeal must be delivered in writing to the Deputy Administrator or postmarked within 30 days after the date the Agency decision is mailed or otherwise provided to the participant. The Deputy Administrator may consider a late appeal if determined warranted by the circumstances.

(b) The regulations at 7 CFR part 11 apply to decisions made under this part.

(c) Producers who believe they have been adversely affected by a determination by the Agency must seek review with the Deputy Administrator before any other review may be requested within the Agency.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device that tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(d) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions and rates prescribed in part 1403 of this chapter.

§ 1424.14 Offsets, assignments, interest and waivers.

(a) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the bioenergy, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in part 1403 of this chapter shall be applicable to agreement payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

(c) Interest charged by CCC under this part shall be at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and/or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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AUTHORITY: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

SOURCE: 63 FR 17312, Apr. 9, 1998, unless otherwise noted.

§ 1425.1 Applicability.

(a) This part specifies the terms and conditions an approved Cooperative Marketing Association (CMA) must meet to obtain marketing assistance loans (MALs) and loan deficiency payments (LDPs) from CCC on behalf of its members.

(b) A CMA meeting the requirements of this part may obtain MALs and LDPs for any eligible commodity for which a MAL and LDP program is in effect.

[80 FR 130, Jan. 2, 2015]

§ 1425.2 Administration.

(a) On behalf of the Commodity Credit Corporation (CCC), the Farm Service Agency (FSA) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator for Farm Programs.

(b) In the field, the provisions of this part will be administered by the State and county FSA committees.

[80 FR 130, Jan. 2, 2015]

§ 1425.3 Definitions.

The definitions in this section are applicable for all purposes of program administration. The terms defined in parts 718 of this title and parts 1421 and 1427 of this chapter are also applicable, except where those definitions conflict with the definitions in this section.

Active member is a member who has utilized the services offered by a CMA in one of the three preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association (CMA) is a cooperative approved by CCC to participate in MAL and LDP programs for any authorized commodity.

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain MALs or LDPs.

Cooperative is a business owned and controlled by the producers who use its services and operated under generally accepted cooperative principles.

Eligible commodity is a commodity which meets the commodity's eligibility requirements set forth in chapter XIV of this title, and is produced and delivered to the CMA from a producer eligible for MALs or LDPs.

Loan deficiency payment (LDP) means a payment made in lieu of a MAL when the CCC-determined value, which is based on the current local price in a county, is below the applicable county loan rate. The payment is the difference between the two rates times the eligible quantity.

Loan pool is any CMA pool containing commodities used by the CMA to obtain either MALs or LDPs.

Market loan gain is the loan rate, minus the repayment rate on loans repaid at a rate that is less than the loan rate. The total of all market loan gains received by a producer for an applicable crop year cannot exceed the producer's applicable payment limitation as specified in part 1400 of this chapter. A producer's adjusted gross income

must also be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

Member is a producer who:

(a) Has fully paid for membership stock or earned equity credits in the CMA;

(b) Has executed a uniform marketing agreement with the CMA; and

(c) Is entitled to all CMA membership rights.

[63 FR 17312, Apr. 9, 1998, as amended at 67 FR 64458, Oct. 18, 2002; 80 FR 130, Jan. 2, 2015]

§ 1425.4 Approval.

(a) For a cooperative to be eligible to participate in the MAL and LDP Programs as an approved CMA, the cooperative must submit an application to CCC. The application must include:

(1) A completed Form CCC–846 indicating commodities for which it seeks approval;

(2) A current financial statement, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the financial statement was prepared in accordance with generally accepted accounting principles;

(3) A copy of the articles of incorporation or articles of association and all marketing agreements for loan pools, together with a certification that this material is current;

(4) Resolutions made by the cooperative's board of directors stating the cooperative will abide by provisions of this part, the nondiscrimination provisions thereof, and all other related CCC policies;

(5) A detailed description of how proceeds from each loan pool will be distributed to members as provided for in § 1425.18;

(6) An executed form CCC-Cotton G, Cotton Cooperative Loan Agreement, by cooperatives applying for approval to participate in the cotton MAL and LDP program; and

(7) Other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative requested by CCC related to the cooperative's proposed methods of conducting MAL and LDP business.

(b) A CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1, which discloses:

(i) The number of active and inactive CMA members;

(ii) The CMA's allocated equity;

(iii) The CMA's unallocated equity; and

(iv) Quantity of each loan pool commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year.

(2) The CMA's latest financial statement. The financial statement must be dated within the past year and be accompanied by a letter from an independent Certified Public Accountant certifying that the financial statement was prepared in accordance with generally accepted accounting principles.

(c) A CMA must furnish information to CCC within thirty calendar days relating to any:

(1) Change in its articles of incorporation and loan pool marketing agreements;

(2) Resolution affecting MAL or LDP operations;

(3) Change to the CMA's name, address, phone number, or related data shown on the CCC–846–1;

(4) Change in loan pool operations with an explanation and justification; and

(5) Additional information CCC may request related to the CMA's continued approval by CCC.

(d) CCC may require a CMA to submit a new initial application instead of a recertification application when it questions whether the CMA is operating according to documents previously submitted.

[63 FR 17312, Apr. 9, 1998, as amended at 67 FR 64458, Oct. 18, 2002; 80 FR 130, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1425.5 Confidentiality.

Information submitted to CCC related to trade secrets, financial or commercial operations, or the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers, agents, and employees of CCC and

the Department of Agriculture except as required to be disclosed by law.

§ 1425.6 Approved CMAs.

(a) CCC may approve a CMA to participate in the MAL and LDP program as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(b) If CCC determines a CMA is in substantial but not total compliance with the requirements of this part, CCC may make the approval conditional on the CMA achieving full compliance within a reasonable period of time, as specified in the notification of conditional approval.

(c) A CMA is approved to participate in the MAL and LDP program until the CMA's approval is suspended or terminated by CCC.

[80 FR 130, Jan. 2, 2015]

§ 1425.7 Suspension and termination of approval.

(a) CCC may suspend a CMA from obtaining MALs and LDPs when CCC determines the CMA has violated any of its agreements with CCC or the CMA has not:

(1) Operated according to the CMA's application for approval or its last recertification submission;

(2) Complied with applicable regulations; or

(3) Corrected deficiencies of the CMA's operation as noted by CCC.

(b) A suspension may be lifted when CCC determines the CMA has complied with all requirements for approval. When suspensions are not lifted within 1 year, or a shorter time period if so indicated in CCC's suspension notification, the CMA's approval automatically terminates.

(c) CCC may terminate a CMA's approval by giving the CMA written notice of the termination.

(d) If a CMA does not have any MALs outstanding, it may voluntarily terminate its participation in the MAL and LDP program through written notice to CCC.

(e) CCC may, on demand, call all outstanding CCC loans made to a suspended or terminated CMA. When loans are called, CCC will provide at least 10 calendar days written notice to the CMA. Commodities pledged as collateral for loans must be repaid by the date specified by CCC. If redemption is not made by the date specified, title to the commodity will vest in CCC and CCC will have no obligation to pay the commodity's market value above the principal amount of such loans.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 130, Jan. 2, 2015]

§ 1425.8 Ownership and control.

(a) CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must provide evidence that:

(1) Active members own more than 50 percent of its allocated equity; and

(2) A majority of directors are active members of the CMA or authorized representatives of active members.

(c) An applicant cooperative or a CMA, not under the ownership or control, of its active members, may be approved by CCC if it is able to establish that, by retiring the equity of its inactive members or by obtaining new members, it can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Open membership.

(a) The CMA must provide CCC documented proof that the CMA admits every membership applicant who is eligible under the statute regulating the CMA.

(b) Notwithstanding paragraph (a) of this section, a CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 131, Jan. 2, 2015]

§ 1425.10 Financial ratio requirement.

To be financially able to make advances to their members and to market their commodities, CMA's must have a current ratio of at least 1 dollar of current assets for each 1 dollar of current liabilities (current ratio of 1:1 or better) on the balance sheet it submits to CCC with its initial application or annual recertification required in § 1425.4.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 131, Jan. 2, 2015]

§§ 1425.11–1425.12 [Reserved]

§ 1425.13 Uniform marketing agreement.

(a) A CMA must enter into a uniform marketing agreement with each member who delivers a commodity to a loan pool.

(b) The identification number used by the member to report acreage on applicable farms to FSA must appear on the marketing agreement.

§ 1425.14 Member business.

(a) At least 50 percent of a crop of an authorized commodity acquired by, or delivered to, a CMA for marketing must be produced by its members for the CMA to obtain a MAL or LDP for such crop. CCC may, for a period not to exceed 2 years, waive this requirement if:

(1) The CMA can establish to CCC that such authorization is necessary for the efficient operation of the CMA; and

(2) The CMA's plan, approved by CCC, will bring the CMA into compliance with the provisions of this section.

(b) Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 131, Jan. 2, 2015]

§ 1425.15 Vested authority.

The marketing agreement between the CMA and its members will give the CMA the authority to pledge the commodity as collateral for a loan, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 131, Jan. 2, 2015]

§ 1425.16 Payment limitation and adjusted gross income provisions.

(a) CMAs must apply any market loan gains received on behalf of members to the loan pool for distribution. However, CMAs must also monitor market loan gains they receive from CCC on behalf of their members and must not obtain market loan gains for a member above the member's payment limitation determined as specified in part 1400 of this chapter.

(b) CMAs must monitor LDPs they receive from CCC on behalf of their members and not obtain LDPs for a member whose AGI is above the limit specified in part 1400 of this chapter.

[80 FR 131, Jan. 2, 2015]

§ 1425.17 Eligible commodity and pooling.

(a) A CMA may establish separate loan pools as needed for quantities of a commodity.

(b) Loans and, if applicable, LDP's will be available to CMA's for any eligible commodity in a loan pool as provided in paragraph (e) of this section and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A loan pool is eligible for MALs and LDPs if:

(1) All of the commodity in the loan pool is eligible for MALs or LDPs, except as provided in paragraphs (d) and (e) of this section;

(2) The commodity was delivered by members to the CMA for their benefit;

(3) The commodity was delivered and the members are eligible for MALs and LDPs;

(4) Members retain the right to share in marketing proceeds from the commodity in accordance with § 1425.18; and

(5) Members agreed to accept a payment of initial advances from the CMA in accordance with § 1425.18(a).

(6) Members agree to refund to the CMA, if requested by the CMA, any denied market loan gain or LDP benefit realized when the proceeds from the loan pool are distributed to the CMA members.

(d) Ineligible commodities may be included in eligible pools when:

(1) The CMA inadvertently included ineligible quantities based on grade, quality, bale weight or repacking in the case of cotton, or other factors; or

(2) There are eligibility discrepancies within FSA records, the producer has certified to the CMA that the commodity is eligible for a MAL, and there is no market gain or LDP involved in the loan pool for the crop year.

(e) A CMA may include a commodity in a pool that is ineligible based on FSA records if the producer has certified to the CMA the commodity is eligible. (For example, an otherwise eligible commodity that is not reflected on a timely filed FSA acreage report.) CCC will specify a time period during which CMAs may obtain MALs or LDPs on the applicable quantity while the eligibility status is resolved. If the final resolution is that the commodity was ineligible, the CMA must repay any MALs outstanding with principal plus interest and any market loan gains obtained plus interest from the date of receiving the market loan gain through the repayment date.

(f) The CMA must have in inventory a quantity of commodity delivered by members of each class and grade at least equal to the quantity each class and grade pledged as MAL collateral.

(g) MALs will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's loan pool.

(h) A CMA must have identity-preserved loan pool commodities stored in approved warehouses while the commodities are pledged as collateral for MAL.

(i) Comingled commodities with MAL eligibility stored on a farm or in a warehouse may be transferred to an authorized warehouse.

(j) Commodities pledged as collateral for MALs must be free and clear of all liens and encumbrances based on a CMA's financial agreements or the CMA must obtain and complete a lien waiver form. When liens are applicable based on CMA financial agreements, the CMA must provide CCC the completed lien waiver form. CMAs must not take any action to cause a lien or encumbrance to be placed on a commodity after a MAL is approved.

(k) If a MAL or LDP is obtained for any quantity in a loan pool, allocations of costs and expenses among separate pools for the commodity in the pool will be made according to generally accepted accounting principles.

(l) A CMA must not apply marketing losses from a commodity not used to obtain a MAL or LDP against the marketing proceeds of a commodity used to obtain a MAL or LDP.

(m) CMAs will not carry forward losses from one loan pool and apply them against a subsequent loan pool without CCC's authorization. CCC may grant authorization when it determines that carrying forward the loss complies with the MAL or LDP Program intent.

(n) The CMA is responsible to CCC for any loss related to commodities the CMA pledged as collateral for MAL or used to obtain LDP related to:

(1) The CMA failing to comply with these regulations;

(2) Changes in quantity or quality of either warehouse or farm stored commodities; or

(3) Liens based on either the CMA's or its members' financial agreements.

(o) Denied market loan gain or denied LDP benefits will be based on payment limitation attribution as specified in part 1400 of this chapter, and must be repaid to CCC by the CMA receiving the MAL or LDP proceeds.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 131, Jan. 2, 2015]

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds must be distributed or otherwise made available to the members account:

(i) Based on the quantity and quality of the commodity delivered by each member;

(ii) Less any authorized charges for services performed or paid by the CMA necessary to condition or otherwise make the commodity eligible for MALs or LDPs, according to the marketing agreement provided for in §1425.13;

(iii) Within 15 work days from the date the CMA receives MAL or LDP proceeds from CCC, or held according to the terms of a deferred payment agreement if requested by the member.

(2) CMA's may credit advances to its members made before loans and LDP's are obtained against the distribution of MAL and LDP proceeds requirement in paragraph (a)(1)(iii) of this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, loan pool proceeds must not be combined with non-loan pool proceeds and the CMA

must distribute loan pool proceeds according to the information it provided CCC in accordance with §1425.4(a)(5).

(2) Sales proceeds from a loan pool may be combined with sales proceeds from other pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in the pools.

(3) MAL and LDP proceeds shall only be issued to members involved in pools used for MALs or LDP's.

(4) When notified by CCC that MAL and LDP distributions to a member are required to be reduced for a program year, farm, or crop, a CMA must not make subsequent pool distributions and must reimburse CCC for distributions previously issued, if applicable.

(c) CMAs must apply market loan gains to the payment limit that is earned on date of redemption for their members when the CMA distributes the pool funds.

[63 FR 17312, Apr. 9, 1998, as amended at 71 FR 42750, July 28, 2006; 80 FR 131, Jan. 2, 2015]

§1425.19 Member cooperatives.

(a) A CMA may obtain MALs or LDPs on behalf of a member cooperative when the member cooperative is itself a CMA operating in accordance with this part. For example, a cooperative of producers may be a member of a CMA that markets a commodity.

(b) If the CMA is approved according to §1425.6, and otherwise meets all the requirements of this part, the MALs and LDPs submitted by members of that CMA will be eligible.

[80 FR 131, Jan. 2, 2015]

§1425.20 [Reserved]

§1425.21 Records required.

(a) A CMA shall maintain records for each MAL or LDP commodity showing the quantity:

(1) Received from each member and nonmember;

(2) Eligible for MALs and LDPs;

(3) By quality factors specified in the applicable commodity regulations including class, grade, and quality, where applicable; and

(4) Of unprocessed inventory broken down by items 1 through 3 above.

(b) Except as provided in paragraph (c) of this section, inventory must be allocated in the following manner until all inventory in a loan pool is depleted:

(1) For processed commodities, the pool's inventory must be adjusted when the commodity is withdrawn from inventory for processing; and

(2) For commodities that are not processed, the pool's inventory must be allocated to the pool and the pool's inventories adjusted when the commodity is shipped.

(c) Records of loan and non-loan pool dispositions do not have to be maintained separately when sales proceeds from pools are allocated according to the quantity and quality of commodity in the pools.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 132, Jan. 2, 2015]

§1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries must be maintained for five years after the applicable crop year and must be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC has the right to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

(c) CCC reserves the right to determine examinations of CMAs based on:

(1) A 3-year rotation; or

(2) The previous crop year MAL or LDP activity if market loan gain and LDP activity increases substantially.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 132, Jan. 2, 2015]

§1425.23 Reports.

(a) CMA's must annually provide CCC a report of all commodity deliveries involved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's must report market gains received on behalf of each member.

[63 FR 17312, Apr. 9, 1998, as amended at 80 FR 132, Jan. 2, 2015]

§ 1425.24 [Reserved]

§ 1425.25 Appeals.

Parts 11 and 780 of this title apply to this part.

[67 FR 64459, Oct. 18, 2002]

PART 1427—COTTON

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AUTHORITY: 7 U.S.C. 7231–7237, 7931–7936, 9011, and 9031–40, 15 U.S.C. 714b and c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations in this subpart are applicable to crops of upland cotton and extra long staple cotton. This part specifies the general provisions under which the Marketing Assistance Loans (MAL) and Loan Deficiency Payment (LDP) Programs will be administered by the Commodity Credit Corporation (CCC). Eligibility to receive MALs and LDPs is subject to additional terms and conditions that are in the MAL note and security agreement and the LDP application. The provisions in this

part apply to the 2014 and subsequent crops.

(b) The basic loan rate, the schedule of premiums and discounts, and forms applicable to the cotton MAL and LDP Programs are available from FSA offices. The forms for use in connection with the programs in this subpart will be prescribed by CCC.

(c) MALs and LDPs 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) Average adjusted income (AGI) and payment limitation provisions specified in part 1400 of this chapter are applicable to MALs and LDPs.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008; 80 FR 132, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1427.2 Administration.

(a) The MAL and LDP Programs will be administered under the general supervision of the Executive Vice President, CCC, or a designee and will 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 will take any required action not taken by the county committee. The State committee will also:

(1) Correct, or require a correction of an action that is not in compliance with this part; or

(2) Stop an employee from taking an action or decision that is not in accordance with the regulations of this part.

(d) The Executive Vice President, CCC, or a designee may determine any question arising under these programs, and reverse or modify a determination made by an FSA employee or State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the MAL and LDP Programs.

(f) A representative of CCC may execute MAL and LDP 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.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008; 80 FR 132, 139, Jan. 2, 2015]

§ 1427.3 Definitions.

The definitions in this section apply for all purposes of program administration regarding the cotton loan and LDP programs. The terms defined in part 718 of this title and parts 1412, 1421, 1423, 1425, and 1434 of this chapter 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.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately before use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Classification means the measurement results provided by the Agricultural Marketing Service (AMS) of color grade, leaf, staple, strength, extraneous matter and micronaire, and for upland cotton, length uniformity.

Commodity certificate exchange means the exchange 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.

Commodity loan gain means the difference between the loan principal amount and the adjusted world price (AWP)-value of a commodity certificate used to exchange the loan collateral.

Consumption means the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cooperative marketing association (CMA) means a cooperative marketing association, approved as specified in part 1425 of this chapter, that has executed a Cotton Cooperative Loan Agreement.

Cotton means upland cotton and extra loan staple cotton meeting the definition in the definitions of ''upland cotton'' and ''extra long staple (ELS) cotton'' in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Cotton storage deficit area means a State, County, or group of contiguous counties within a State, where the production of cotton for the area based on the most recent estimate from the USDA, National Agricultural Statistics Service exceeds the combined approved inside storage capacity less carry-in stocks, of warehouses that have entered into a Cotton Storage Agreement with CCC.

Current Far East shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 1$^{3}/_{32}$ inch cotton, CFR (cost and freight) Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Electronic Agent Designation is an electronic record that:

(1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specific loan;

(2) Is maintained by providers of electronic warehouse receipts; and

(3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Exchange rate will be the effective AWP for cotton on the date the request to purchase a certificate is received by CCC.

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 Barbadense species of cotton, and any hybrid thereof; and

(3) Any other variety of cotton in which one or more of these varieties predominate.

False packed cotton means cotton in a bale containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a nonrecourse loan entered into between a producer and CCC.

Form G loan means a CCC nonrecourse loan entered into between a CMA and CCC.

Good condition means a bale of cotton that, by comparison with the photographic standards of ''A Guide for Cotton Bale Standards'' of the Joint Cotton Industry Bale Packaging Committee, is determined to be a Grade A or Grade B bale.

Lint Cotton means cotton that has passed through the ginning process.

Loan deficiency payment (LDP) means a payment made in lieu of a MAL when the CCC-determined value, which is based on the current local price in a county, is below the applicable county loan rate. The payment is the difference between the two rates times the eligible quantity.

Loan rate is the national loan rate for base quality upland cotton and the national average rate for ELS cotton adjusted by any premiums and discounts determined by CCC.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and LDP documents;

(2) Disbursing loan and LDP proceeds;

(3) Accepting loan repayments;

(4) Handling documents involved with forfeiture of loan collateral to CCC; and

(5) Providing loan, LDP, and accounting data to CCC for statistical purposes.

Market loan gain means the loan rate, minus the repayment rate on upland cotton loans repaid at the AWP-value that is less than the loan rate. A producer's adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

Transfer means, depending on the context, the process for a producer or an authorized agent of the producer to:

(1) Physically relocate cotton loan collateral from one CCC-approved warehouse to another CCC-approved warehouse,

(2) Exchange an electronic warehouse receipt for a receipt certificated by a warehouse for delivery under a futures contract without physically relocating the cotton, or

(3) Do both of the above.

Turn-around loan is a special designation for a loan that is requested, approved for disbursement, and immediately exchanged with a commodity certificate purchased the same day.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

Warehouse receipt means a receipt containing the required information specified in this part that may or may not be certificated for delivery for a futures-pricing contract, and is an electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system.

Wet cotton means a bale of cotton that, at a gin, has 7.5 percent or more moisture, wet basis, at any point in the bale.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51427, Aug. 30, 2006; 73 FR 30275, May 27, 2008; 73 FR 65719, Nov. 5, 2008;75 FR 50849, Aug. 18, 2010; 80 FR 132, 139, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1427.4 Eligible producer.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, or other legal entity that produces cotton as a landowner, landlord, tenant, or sharecropper;

(2) Comply with all provisions of this part; and

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation:

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400, subpart F—Average Adjusted Gross Income Limitation;

(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 is 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 is 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 LDP documents are signed by the guardian;

(3) Any note and security agreement or LDP 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 is jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer also remains liable for repayment of the entire MAL amount until the MAL is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the MAL. 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 MALs and LDPs on eligible cotton on behalf of its members who are eligible to receive loans or LDPs 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 MAL or LDP, payment will, upon application to CCC, be made to the person(s) who would be entitled to the producer's payment under the regulations in part 707 of this title.

(g) Adjusted gross income (AGI) provisions specified in part 1400 of this chapter apply to producer eligibility for MALs and LDPs.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008; 80 FR 132, 139, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1427.5 General eligibility requirements.

(a) To receive loans or LDPs for a crop of cotton, a producer must execute a note and security agreement or LDP 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 LDP 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 LDPs:

(i) At the FSA 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 LDPs 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 MAL or a subject of an LDP application, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition and be covered by fire insurance. Bales pledged as collateral for a CCC loan, must be stored inside an approved storage warehouse unless, as determined under §1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan. Bales submitted to CCC for an LDP are not subject to the approved storage requirements contained in §1423.10.

(3) Be represented by a warehouse receipt meeting the requirements of §1427.11, except as provided in §§1427.10(e) and 1427.23(a)(4);

(4) Not be false-packed, wet cotton, water-packed, mixed-packed, reginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied and not be a flat or modified flat bale;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain an LDP ;

(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 an LDP has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds net weight may be pledged for loan at 600 pounds net weight.

(10) Be packaged in materials that meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable year or that are identified and approved by the Joint Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year, except that producers approved for the outside storage of ELS cotton as provided for in §1427.10(e) must assure that the packaging materials used for bales stored outside must meet the materials, sealing, and humidity specifications contained in the outside-storage addendum to their ELS cotton MAL agreement.

(11) Be ginned by a ginner that:

(i) Has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Has entered into a Cooperating Ginners' Bagging and Bale Ties Certification and Agreement on a form prescribed by CCC, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section and;

(12) Be production from acreage that has been reported timely under part 718 of this title.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be of a grade, strength, staple length, and other factors specified in the schedule of loan rates for ELS cotton;

(2) Have a micronaire specified in the schedule of micronaire premiums and discounts for ELS cotton; and

(3) Have an extraneous matter specified in the schedules of premiums and discounts for extraneous matter for ELS cotton.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been graded by using a High Volume Instrument;

(2) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(3) Have a strength reading specified in the schedule of strength premiums and discounts for upland cotton;

(4) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(5) Have an extraneous matter within the limits specified in the schedule of discounts for extraneous matter for upland cotton; and

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e) To be eligible to receive MALs and LDPs, a producer must have beneficial interest in the cotton that is tendered to CCC for a MAL or LDP. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has the requisite title to and control of cotton

that is tendered to CCC as collateral for a MAL or is the cotton that will be used to determine an LDP. A determination of whether a person has beneficial interest in cotton is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(f) Except as provided in paragraph (h) of this section, when requesting a MAL, in order to have beneficial interest in the cotton tendered as collateral for the loan, a person must:

(1) Be the producer of the cotton as determined in accordance with §1427.4;

(2) Have had ownership of the cotton from the time it was planted through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the cotton from the time of planting through the maturity date of the loan. To have control of the cotton, such person must have complete decision making authority regarding whether the cotton will be tendered as collateral for a loan, when the loan will be repaid or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the cotton will be maintained during the term of the loan; and

(g) Except as provided in paragraph (h) of this section, when requesting an LDP, in order to have beneficial interest in the cotton a person must:

(1) Be the producer of the cotton as determined in accordance with §1427.4;

(2) Have had ownership of the cotton from the time it was planted through the date the producer has elected to determine the LDP rate; and

(3) Have control of the cotton from the time of planting through the date the producer has elected to determine the LDP rate. To have control of the cotton, such person must have complete decision making authority regarding whether an LDP will be requested with respect to the cotton; when the loan deficiency rate will be selected; and where the cotton will be maintained prior to the date on which the LDP rate will be determined;

(4) If the cotton has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the cotton to a warehouse approved in accordance with §1427.10. Delivery of the cotton to a location other than to such an approved warehouse will result in the loss of beneficial interest in the cotton on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day regardless of any other action or agreement between the entity where the cotton was delivered and the producer, unless such an entity has been approved by CCC under §1427.10.

(h) Notwithstanding paragraphs (f) and (g) of this section, in order to facilitate the handling of situations involving the death of a producer, CCC will consider an estate and a person to whom title to cotton has passed by virtue of State law upon the death of the producer to have beneficial interest in the cotton produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(i) Notwithstanding paragraphs (f) and (g) of this section, a person who purchases or otherwise acquires cotton from a producer under any circumstances does not obtain beneficial interest to the cotton whether such purchase or acquisition is made prior to the harvest of the crop or after harvest except in one instance. CCC will consider a person to have beneficial interest in cotton if, prior to harvest, such person has obtained title to the growing cotton at the same time that such person obtained full title to the land on which such crop was growing;

(j) A producer will lose beneficial interest in cotton if the producer receives any payment from any person under any contractual arrangement with respect to cotton if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the cotton or control of the cotton prior to or after harvest unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the cotton and such option contains the following provision:

Notwithstanding any other provision of this option to purchase or any other

contract, title and control of the cotton and beneficial interest in the cotton as specified in 7 CFR 1427.5 will remain with the producer until the buyer exercises this option to purchase the cotton. This option to purchase will expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such cotton;

(2) The date CCC claims title to such cotton; or

(3) Such other date as provided in this option.

(k) Absent other provisions causing the producer to lose beneficial interest in the cotton, inclusion in a contract of a provision that allows the producer to select the sales price of the cotton at the time the contract is entered into or at a later date, a contract normally referred to as a deferred price contract or a price later contract, will not result in the loss of beneficial interest in the cotton.

(l) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a MAL and an LDP may be made with respect to such production if at the time of the request for such a loan or payment the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

(m) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample will be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn under Agricultural Marketing Service (AMS) dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(n) If MALs or LDPs are made available to producers through a CMA under part 1425 of this chapter, the beneficial interest in the cotton must always have been held by the producer-member who delivered the cotton to the CMA or its member, except as otherwise provided in this section. Cotton delivered to such a CMA will not be eligible to receive a MAL or an LDP 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.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 32426, June 6, 2006; 71 FR 51427, Aug. 30, 2006; 71 FR 60413, Oct. 13, 2006; 73 FR 65719, Nov. 5, 2008; 80 FR 133, 139, Jan. 2, 2015]

§ 1427.6 Disbursement of MALs.

(a) Individual producers may request loans from:

(1) FSA County Service Centers;

(2) Loan servicing agents; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on a form prescribed by CCC.

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

(c) The loan documents will 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 will be refunded promptly.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008; 80 FR 139, Jan. 2, 2015]

§ 1427.7 Maturity of MALs.

(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 approved as specified in § 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

will vest in CCC the day after such maturity date and CCC will 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.

(c) Following written notice by CCC to the producer and warehouse operator, CCC may advance the maturity date of cotton pledged as collateral for a MAL if:

(1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage,

(2) Any term of the producer's loan agreement is violated, or

(3) Carrying charges are substantially in excess of the average of carrying charges available elsewhere and the storing warehouse, after notice, declines to reduce such charges.

(d) CCC will not assume a loss on MAL collateral stored in a warehouse for any reason.

(e) The maturity date of any MAL may not be extended.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008; 80 FR 133, 139, Jan. 2, 2015]

§ 1427.8 Amount of MALs.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at FSA State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan will 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 will 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.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008; 80 FR 133, 139, Jan. 2, 2015]

§ 1427.9 Classification of cotton.

(a) All cotton tendered for loan and LDP must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by AMS.

(b) An AMS cotton classification must be based upon a representative sample drawn from the bale by samplers under AMS procedures and instructions.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse must sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by AMS. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office.

(d) If a sample has been submitted for classification, another sample will not be drawn, except for a review classification.

(e) Where review classification is not involved:

(1) If through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate will be based on the classification having the lower loan value;

(2) CCC will use classification information received directly from AMS rather than AMS classification information received from the producer.

(f) CCC will base any cotton loan rate or loan deficiency payment rate on the most recent classification information available before the loan or loan deficiency payment has been calculated. CCC will not adjust such rates based on review classification information submitted subsequent to the original benefit calculation.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008; 80 FR 133, 139, Jan. 2, 2015]

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC, unless the producer agrees to provisions of 1427.5(n).

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office Beacon Facility-Mail Stop 8748, 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 FSA State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made on a bale of cotton, the operator will, if such cotton is not stored within the warehouse, as directed by CCC place such cotton within such warehouse.

(c) An approved cotton storage warehouse may temporarily store cotton pledged as collateral for a CCC loan outside, subject to the following conditions:

(1) The warehouse submits a request for approval of outside storage in a format prescribed by CCC.

(2) The warehouse is located in a storage deficit area as determined by CCC.

(3) The warehouse complies with all outside storage requirements established by CCC including but not limited to the duration of such outside storage as granted by CCC for the individual application, all-risk insurance for the loan value of the cotton with CCC as loss payee, and use of additional protective coverings and materials that elevate the entire bottom surface of the bale to protect such cotton from damage by water or airborne contaminants.

(4) The electronic warehouse receipt for any bale or bales of cotton pledged as collateral for a CCC loan must include the dates that the bale was initially stored outside, and the date that outside storage stopped.

(5) The warehouse operator provides CCC:

(i) A weekly report in a format prescribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside, and

(ii) Through their electronic warehouse receipt provider, on a current basis, location indicators and effective dates for any loan bale stored outside.

(d) Warehouse charges paid by a producer will not be refunded by CCC.

(e) The approved storage requirements provided in this section may be waived by CCC if the producer requests an LDP pursuant to the LDP provisions in § 1427.23.

(f) With respect to crops of ELS cotton, a producer may obtain a loan on cotton that is not stored as otherwise provided in this section if such cotton is stored:

(1) At a commercial entity that is involved in the handling or storage of cotton in a county or area determined and announced by CCC as approved for outside storage of ELS loan collateral; and

(2) The site is constructed in a manner to prevent the accumulation of water under such cotton.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 51427, Aug. 30, 2006; 73 FR 65720, Nov. 5, 2008; 80 FR 134, 139, Jan. 2, 2015; 86 FR 70706, Dec. 13, 2021]

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by electronic warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or before the date the producer signs the note and security agreement.

(b) Warehouse receipts, under § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its terms the tare and the net weight of the bale represented by the receipt. The net weight shown on the warehouse receipt must be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if gin weights are permitted by the licensing authority for the warehouse.

(2) The tare weight shown on the receipt must be the tare weight furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare weight, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact.

(f) The warehouse receipt must show the compression status of the bale; *i.e.*, flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008; 86 FR 70706, Dec. 13, 2021]

§ 1427.12 Liens.

(a) Waivers that fully protect the interest of CCC must be obtained before loan disbursement, notwithstanding provisions in § 1427.19(h), if there are any liens or encumbrances on the cotton tendered as collateral for a loan, even though the liens or encumbrances are satisfied from the loan proceeds, except that CCC may elect to waive such lien requirements for loans having a principal value of less than $50,000.

(b) CCC may elect to accept cotton as loan collateral that has warehouse receiving, compression, or other charges without a lien waiver if the producer at the time of loan application agrees to reimburse CCC for any such charges that CCC may pay on behalf of the producer or that reduce the value of the cotton delivered to CCC.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008]

§ 1427.13 Fees, charges and interest.

(a) A producer must pay a nonrefundable loan service fee to CCC at the time of loan disbursement or, if applicable, to a loan servicing agent, at a rate determined by CCC. The fee is in addition to a cotton clerk fee specified in paragraph (b) of this section. The fee amounts are available in FSA State and county offices and are shown on the note and security agreement. Fees will be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or LDP 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 will 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), must remit to CCC an assessment that will be transmitted by CCC to the Cotton Board and will be deducted from the:

(1) Loan proceeds for a crop of cotton and will be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) LDP proceeds for a crop of cotton and will be at a rate equal to up to one percent of the LDP 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.

(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that:

(i) Exceed CCC's maximum storage credit rate for the warehouse established in § 1427.19 and

(ii) Were paid by CCC for periods subject to denied storage credits due to the cotton being stored outside as specified in § 1427.19(h)(2)(ii).

(4) Unpaid warehouse compression charges.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51427, Aug. 30, 2006; 73 FR 65721, Nov. 5, 2008; 80 FR 134, 139, Jan. 2, 2015]

§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) The special procedure in this section is provided to assist persons or firms that, 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 MAL or to receive an LDP. A person, firm, or financial institution that has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure will apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the MALs or LDPs for the amounts advanced and has been authorized by the producer to deliver the loan or LDP documents to a FSA county office for disbursement of the loans or LDPs; and

(2) To MAL or LDP 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 MAL or LDP documents will be mailed, sent electronically, or delivered to the appropriate FSA county office and will show the entire proceeds of the MALs or LDPs, 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 LDP 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 MAL or LDP advances to the producers.

(2) The documents will be accompanied by a Transmittal Schedule of Loan and LDP Documents (Transmittal) on a form prescribed by CCC, in original and two copies, numbered serially for each FSA county office by the person, firm, or financial institution that made the MAL or LDP advance. The Transmittal will show the amounts invested by the person, firm, or financial institution in the MALs or LDPs.

(3) Upon receipt of the MAL or LDP documents and Transmittal, the FSA 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 will be deemed to have invested funds in the loans or LDP as of

the date MAL or LDP documents acceptable to CCC were delivered to a FSA county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a FSA 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 MAL or LDP 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.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 134, 139, Jan. 2, 2015]

§ 1427.16 Movement and protection of warehouse-stored cotton.

(a) CCC may insure or reinsure stored cotton against any risk, or otherwise take an action it deems necessary to protect the interest therein of CCC.

(b) A producer may transfer cotton loan collateral subject to the following conditions:

(1) The cotton is represented by an electronic warehouse receipt;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator;

(4) The CCC MAL that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC; and

(5) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under this paragraph must be paid by the requestor of the transfer.

(c) CCC will exclude from the calculation of any storage credits payable under § 1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(i) Not in compliance with any of the terms of its Cotton Storage Agreement, (ii) Storing cotton loan collateral outside, or

(iii) Under common ownership with the receiving warehouse.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008; 80 FR 139, Jan. 2, 2015]

§ 1427.17 [Reserved]

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a MAL or LDP 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 LDP will be payable upon demand by CCC. The producer will be liable for:

(i) The amount of the MAL or LDP;

(ii) Any additional amounts paid by CCC for the loan or LDP;

(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.

(vii) CCC will not assume any loss pertaining to cotton stored in a warehouse for any reason.

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved the loan collateral without prior written approval from CCC, the value of such collateral will be equal to its loan value, plus accrued interest, plus warehouse charges, and liquidated damages, as determined by CCC.

(b) If the amount disbursed under a MAL, or in settlement thereof, or LDP exceeds the amount authorized by this subpart, the producer will be liable for repayment of the difference, plus interest. In addition, the commodity pledged as collateral for the loan will not be released to the producer until the difference is repaid.

(c) If the amount collected from the producer in satisfaction of the MAL or LDP is less than the amount required under this subpart, the producer will be personally liable for repayment of the amount of the difference plus applicable interest.

(d) If more than one producer executes a note and security agreement or LDP application with CCC, each producer is jointly and severally liable for the violation of the terms and conditions of the note and security agreement or LDP application and this subpart. Each producer also remains liable for repayment of the entire loan or LDP 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 LDP was made. In addition, the producer may not amend the note and security agreement or LDP application for the producer's claimed share in the cotton after execution of the note and security agreement or LDP 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 LDP, 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 will be assessed on the quantity involved in the violation. Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the MAL rate applicable to the loan note.

(f) When it has been determined that a violation of the terms and conditions of a loan deficiency application has occurred, CCC will determine the quantity of the cotton involved with respect to such violation and assess liquidated damages by multiplying the quantity of cotton involved in the violation by 10 percent of the MAL rate.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC will:

(1) Assess liquidated damages under paragraph (e) of this section; and

(2) Call the applicable MAL involved in the violation and require repayment of any market loan gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and for an LDP, require repayment of the LDP and charges plus interest from the date the LDP 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 will notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken under paragraph (f) or (g) of this section.

(i) If CCC accelerates the maturity date for a loan under this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate under §1427.19 or utilize the provisions of part 1401 of this chapter for such loan.

(j) Any or all of the liquidated damages assessed under paragraph (e) of this section may be waived as determined by CCC.

(k)(1) Notwithstanding any other provision of this part, for ELS cotton stored as provided in §1427.10(f), the producer is liable for all costs associated with the storage of the cotton while it is stored outside. CCC will make no storage payment or any other payment with respect to ELS cotton stored as provided in §1427.10(f).

(2) The producer of ELS cotton that is stored as provided in §1427.10(f) must:

(i) Certify the quantity of such cotton on the loan application; certify the cotton is packaged in a hermetically sealed bag with an internal humidity level established by the gin as appropriate to safeguard the cotton; certify that packaging materials meet or exceed industry minimum standards; certify that the storage area is suitable for cotton storage and is in an area approved by CCC; certify that the storage area is constructed to prevent water accumulation under the cotton and is outside a 100-year floodplain; and certify that the storage area is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the storage area;

(ii) Be responsible for any loss in quantity or quality of such cotton;

(iii) If the loan is satisfied by forfeiting the cotton to CCC, be responsible for all costs associated with delivering such cotton to a warehouse designated by CCC, all costs associated with any re-classification and repackaging that may be required by CCC or the warehouse operator to whom the cotton is delivered, all charges by the receiving warehouse for receiving the cotton and issuing an electronic warehouse receipt for the cotton, and other charges as may be levied by the warehouse specific to outside-stored cotton; and

(iv) Not move such cotton after the loan application is submitted to CCC without prior written approval of the county committee. Failure of the producer to receive such permission will subject the producer to administrative actions.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 32427, June 6, 2006; 73 FR 65721, Nov. 5, 2008; 80 FR 134, 139, Jan. 2, 2015]

§ 1427.19 Repayment of MALs.

(a) Warehouse receipts pledged as collateral for a CCC loan will not be released except as provided in this section.

(b) A producer, an authorized agent or anyone subsequently designated by the producer in the manner prescribed by CCC may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined under this section. CCC, upon proper payment for the amount due, will 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 MAL:

(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 FSA 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 will 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 loan gain. The total amount of any market loan gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton under §1427.7.

(g) In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under §1427.25(e).

(h) For purposes of calculating loan-period accrued storage charges that CCC may credit to the loan repayment amount under paragraph (i) of this section:

(1) The warehouse storage rates for cotton crops under loan will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) The storage rate for 2006 crop cotton reduced by 10 percent.

(2) CCC will not credit the loan repayment amount for a bale for any storage charges that accrued while the cotton was stored outside, except that storage may be credited for up to 15-days of outside storage beginning on the day the warehouse was notified that the bale is under loan if the bale was inside on the 15th day from the date of notification.

(3) The loan period will be determined by CCC to begin:

(i) For loan disbursed by the FSA, on the date all loan documents, as determined and announced by CCC, have been received or

(ii) For a loan disbursed by a CMA or an authorized loan servicing agent, on the date the loan was disbursed by CCC.

(i)(1) An upland cotton loan repayment rate will not exceed the loan principal plus accrued interest for the period provided in §1427.19(j).

(2) When the prevailing adjusted world price of upland cotton, as determined under §1427.25, is less than the combined value of the loan principal, accrued interest, and warehouse storage that accrued during the period of the loan, CCC will permit the loan to be repaid at the adjusted world price less the storage charges that accrued during the period of the loan.

(j) For purposes of calculating interest charges on upland and extra long staple cotton loan principal, the loan period will be the period starting the date after the disbursement of the loan amount to, and including, the loan repayment date, except that interest is not charged for a loan that is disbursed and repaid on the same date.

(k) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with §1427.7.

(l) A producer who receives a market loan gain or LDP and later is determined to have been ineligible must refund the market loan gain or LDP to CCC.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51428, Aug. 30, 2006; 73 FR 65721, Nov. 5, 2008; 80 FR 135, 139, Jan. 2, 2015]

§1427.20 Handling payments of $9.99 or less and collections not exceeding $24.99.

(a) Amounts of $9.99 or less will be paid to the producer only upon request.

(b) Deficiencies of $24.99 or less, including interest, may be disregarded unless CCC demands in writing that they be paid.

[80 FR 135, Jan. 2, 2015]

§1427.21 Settlement.

(a) The settlement of cotton loans will be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC subject to the producer being responsible for, if applicable, warehouse receiving charges, new bale ties, unpaid warehouse compression, charges for and related to the certification of a bale and for any subsequent exchange of certificated receipts, storage charges for any period of yard storage, and storage charges in excess of any maximum storage credit rates as determined and announced by CCC.

(b) For purposes of settlements for cotton delivered to CCC in satisfaction of a loan obligation, CCC may elect to calculate such settlement values based on the net weight, condition, and classification as reflected on the warehouse receipt delivered to CCC, whether such receipt is the receipt issued by the original storing warehouse and presented for calculating the loan amount or a receipt issued by a subsequent warehouse due to the transfer of such bale while pledged as collateral for a CCC loan.

(c) If a producer does not pay CCC the amount due under a loan, CCC will take title to the cotton as provided in §1427.7(b).

(d) With respect to ELS cotton which is stored as provided in §1427.10(f), settlement of loans will be made based upon the determination of the quantity and quality made by CCC at the time of acceptance of the cotton by CCC at the warehouse designated by CCC as provided in §1427.18(k).

(e) If CCC sells the commodity described in paragraph (a) of this section in settlement of the recourse loan, the sales proceeds will be applied to the amount owed CCC by the producer. The

producer is responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. When CCC sells any cotton obtained by forfeiture under a MAL, CCC will, in all instances, retain all proceeds obtained from the sale of the cotton and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the cotton to CCC.

(f) CCC will pay to the warehouse any unpaid storage or receiving charges for forfeited loan collateral, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the loan maturity date, as soon as practicable after the cotton is forfeited.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49329, Aug. 18, 2003; 71 FR 32427, June 6, 2006; 73 FR 65721, Nov. 5, 2008; 80 FR 135, 139, Jan. 2, 2015]

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(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 upland cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office by:

(1) Completing a written request on the form or providing the information as required by CCC:

(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.

(d) Gains realized from a commodity certificate exchange are not subject to AGI or payment limitation provisions specified in part 1400 of this chapter.

[86 FR 70706, Dec. 13, 2021]

§ 1427.23 Cotton LDPs.

(a) In order to be eligible to receive such LDPs the producer of the upland cotton must:

(1) Comply with all of the upland cotton MAL eligibility requirements under this subpart;

(2) Agree to forgo obtaining such loans unless denied an LDP due to payment limitation;

(3) Submit, on a form prescribed by CCC, to the FSA county office on or before beneficial interest is lost in such quantity and before the final loan availability date for the commodity:

(i) An indication of their intentions to receive an LDP on the identified commodity or

(ii) A completed request for an LDP for a quantity of eligible cotton under § 1427.5(a).

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) For LDPs requested before ginning of the cotton based on a locked-in adjusted world price, provide identifying numbers for modules or other storage units that will correspond to the gin-assigned numbers of the bales produced from the unginned cotton; and

(6) Otherwise comply with all program requirements.

(b) The LDP applicable to a crop of cotton will be computed by multiplying the applicable LDP 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 MAL.

(c) The LDP rate for a crop of upland cotton will 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 FSA county office, loan servicing agent, or cotton commercial bank. In no case will the LDP rate for a bale exceed the value of the bale had it been pledged as collateral for a MAL.

(d) The total amount of any LDPs that a person may receive is subject to AGI provisions specified in 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 an LDP under § 1427.5, the LDP rate applicable to such cotton will be:

(1) Based on the date the cotton was ginned, which CCC will consider to be the date of the LDP request, if payment application is made in the manner prescribed by CCC for obtaining such rate;

(2) Based on the date of request for lock-in of the adjusted world price if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(3) Based on the date a completed request including production evidence is submitted in the manner prescribed by CCC for obtaining such rate.

(f) In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. Eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under § 1427.25(e).

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 32427, June 6, 2006; 73 FR 65722, Nov. 5, 2008; 80 FR 135, 139, Jan. 2, 2015; 86 FR 70707, Dec. 13, 2021]

§ 1427.24 [Reserved]

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC will determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32-inch) cotton, CFR (cost and freight) Far East, the prevailing world market price for upland cotton will be based on the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32-inch cotton, CFR Far East.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current Far East shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward Far East shipment price) are available for growths quoted for M 1 3/32-inch cotton, CFR Far East, the prevailing world market price for upland cotton will be based on the average of the current Far East shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32-inch cotton, CFR Far East, except as may be determined by the Secretary as specified in paragraph (c)(3)(iv) of this section.

(3) The upland cotton prevailing world market price determined as specified in paragraphs (a)(1) or (a)(2) of this section is referred to as the ''Far East price'' (FE).

(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 will be based on the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted as specified in paragraph (c) of this section (adjusted world price (AWP)), will apply to crops of upland cotton.

(c) The upland cotton AWP will equal the FE determined as specified in paragraph (a) of this section, adjusted as follows:

(1) FE will be adjusted to U.S. location by deducting the average costs to market, including average transportation costs, as determined by the Secretary.

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for

base quality SLM 1 1/16-inch, leaf 4 cotton.

(3) The prevailing world market price, adjusted as specified in paragraphs (c)(1) and (c)(2) of this section, may be further adjusted if it is determined that the adjustment is necessary to:

(i) Minimize potential loan forfeitures;

(ii) Minimize the accumulation of stocks of upland cotton by the Federal Government;

(iii) Ensure that upland cotton produced in the United States can be marketed freely and competitively, both domestically and internationally; and

(iv) Ensure an appropriate transition between current-crop and forward-crop price quotations, except that forward-crop price quotations may be used prior to July 31 of a marketing year only if there are insufficient current crop quotations and the forward-crop price quotation is the lowest such quotation available.

(d) The upland cotton AWP, determined as specified in paragraph (c) of this section, and the amount of the additional adjustment determined as specified in paragraphs (e) and (f) of this section, will be announced, to the extent practicable, at 4 p.m. eastern time each Thursday. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next work day.

(e)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further coarse count adjustment as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of 1 1/16-inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade, leaf, and staple length must be determined as specified in § 1427.9. If no such official classification is presented, the coarse count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (e)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ''coarse count'' cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton, CFR Far East (Far East coarse count price); or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for ''coarse count'' cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.

(3) Regarding the determination of the Far East coarse count price specified in paragraph (e)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(f)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be

subject to a further fine count adjustment as provided in this section regarding all upland cotton having a loan schedule premium or discount exceeding that for Middling, leaf 3, staple length 1 3/32-inch upland cotton, and

(ii) Grade, staple length, and leaf must be determined as specified in § 1427.9. If no such official classification is presented, the fine count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (f)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ''fine count'' cotton, CFR Far East, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''fine count'' cotton, CFR Far East (Far East fine count price) or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for ''fine count'' cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''fine count'' cotton, CFR Far East (Far East fine count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 1 1/8-inch, leaf 2 cotton.

(3) Regarding the determination of the Far East fine count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) In the determination of FE as specified in paragraph (a)(2) of this section, the Far East coarse count price specified in paragraph (e)(2)(i)(B) of this section, and the Far East fine count price as specified in paragraph (f)(2)(i)(B) of this section, CCC will use either current Far East shipment prices, forward Far East shipment prices, or any combination thereof to determine FE or the Far East coarse count price or the Far East fine count price used in the determination of the adjustment for upland cotton specified in paragraphs (e)(1) and (f)(1) of this section and determined as specified in paragraphs (e)(2) and (f)(2) of this section to prevent distortions in such adjustment.

(h) For particular bales, the AWP determined as specified in paragraph (c) of this section, will be subject to further adjustments to a value no less than zero, as CCC determines, based on the Schedule of Premiums and Discounts as announced for the loan program for an upland cotton crop.

[73 FR 65722, Nov. 5, 2008, as amended at 77 FR 19927, Apr. 3, 2012; 80 FR 135, Jan. 2, 2015]

Subparts B–C [Reserved]

Subpart D—Recourse Seed Cotton Loans

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.160 Applicability.

(a) This subpart is applicable to crops of upland and extra long staple seed cotton and as otherwise determined appropriate by the Deputy Administrator. This subpart specifies the terms and conditions under which recourse seed cotton loans will 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 that must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms that are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates will be based on the base quality loan rate for upland cotton and the national average loan rate for extra long staple cotton.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the FSA county office that, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program will be prescribed by CCC and will be available at FSA State and county offices.

(d) Loans will 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.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65724, Nov. 5, 2008; 80 FR 136, 139, Jan. 2, 2015; 86 FR 70707, Dec. 13, 2021]

§ 1427.161 Administration.

(a) The Recourse Seed Cotton Loan Program that is applicable to a crop of cotton will be administered under the general supervision of the Executive Vice President, CCC, or a designee and will be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee will take any action required by these regulations which has not been taken by the county committee. The State committee will 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 will 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, will be null and void.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, 139, Jan. 2, 2015]

§ 1427.162 [Reserved]

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent must request a loan at the FSA county office for the county that, 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 CMAs designated by producers to obtain loans on their behalf may, unless otherwise authorized by CCC, obtain loans through a central FSA county office designated by the State committee.

(b) Disbursement of each loan will be made by the FSA county office of the county that is responsible for administering programs for the farm on which the cotton was produced, except that CMAs designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central FSA county office designated by the State committee. Service charges will be deducted from the loan proceeds.

(1) The producer or the producer's agent must not present the loan documents for disbursement unless the cotton is in existence and in good condition.

(2) If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent must 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 must be refunded promptly.

[80 FR 136, Jan. 2, 2015]

§ 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 that may be pledged as collateral for a loan is the estimated quality of lint cotton in each lot of seed cotton as determined by the FSA county office, except that if a control sample of the lot of cotton is classed by an AMS Cotton Classing Office or other entity approved by CCC, the quality for the lot is 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).

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, Jan. 2, 2015]

§ 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 must pay a non-refundable loan service fee at a rate determined by CCC.

(b) Interest which accrues for a loan will be determined under part 1405 of this chapter.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, 139, Jan. 2, 2015]

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan will be determined by the FSA 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 will 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 will 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 will 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 will not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used will 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.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, 139, Jan. 2, 2015]

§ 1427.171 Approved storage.

Approved storage consists of storage located on or off the producer's farm (excluding public warehouses) that is determined by a county committee representative to afford adequate protection against loss or damage and 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 the 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 permit a reasonable time to such persons to remove the cotton from the premises.

[80 FR 136, Jan. 2, 2015]

§ 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 must not remove from storage any cotton that is pledged as collateral for a loan until prior written approval has been received from CCC for removal of the cotton. If a producer or the producer's agent obtains CCC approval, they may remove the cotton from storage, sell the seed cotton, have it ginned, and sell the resulting lint cotton and cottonseed. The ginner must inform the FSA 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 must be paid 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 LDP 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 LDP 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 an LDP can be approved under subpart A of this part, on the lint cotton. If a CMA, which is authorized by producers to obtain loans in their behalf, removes seed

cotton from storage before obtaining approval to move the cotton, the removal will constitute conversion of the cotton unless the CMA:

(i) Notifies the FSA 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 will 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 FSA 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 must immediately notify the FSA 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 accelerate the maturity date and request 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 resulting lint cotton within the period specified by the county committee, the cotton will 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 must immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and must, at the same time, inform the FSA county office. If the producer does not do so, the seed cotton will be considered abandoned.

(e) CCC will not assume any loss in quantity or quality of the loan collateral for recourse seed cotton loans.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, 139, Jan. 2, 2015]

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan that is abandoned or 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 is 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 will be paid to the producer or, if applicable, to any secured creditor of the producer.

[80 FR 137, Jan. 2, 2015]

§ 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 must be refunded upon demand by CCC. The producer will 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 will 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 is liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan will 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 is 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 is 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 also remains 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) If a producer makes any fraudulent representation in obtaining a loan, in maintaining or settling a loan, or disposing of or moving the collateral without the prior approval of CCC, that is a violation of the terms or conditions of the note and security agreement. If CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages will be assessed on the quantity of the seed cotton that is involved in the violation by multiplying the quantity involved in the violation by 10 percent of the loan rate applicable to the loan note. This amount will apply for both good faith and not good faith determinations.

(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 will:

(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 will:

(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.

[67 FR 64459, Oct. 18, 2002, as amended at 80 FR 136, 139, Jan. 2, 2015]

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as ''CCC'') of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141 (hereinafter referred to as the ''KCCO'').

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart must submit to CCC at KCCO:

(1) A completed ''Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,''

(2) A current financial statement on a ''Financial Statement'' form, supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than a ''Financial Statement'' form with approval of the Director, KCCO, or the Director's designee. Financial statements must show the financial condition of the warehouseman as of a date no earlier than 90 days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements must be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985; 80 FR 137, Jan. 2, 2015]

§ 1427.1082 Basic standards.

(a) Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities must meet the following standards:

(1) The warehouseman must:

(i) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman,

if a corporation, must be authorized by its charter to engage in such business,

(ii) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(iii) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(iv) Have available sufficient funds to meet ordinary operating expenses,

(v) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(vi) Maintain accurate and complete inventory and operating records,

(vii) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(viii) Have available at the warehouse adequate and operable fire-fighting equipment for the type of warehouse and applicable stored commodity, and

(ix) Have a work force and equipment available to provide adequate storage and handling service.

(2) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation must have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(3) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation must:

(i) Have a satisfactory record of integrity, judgment, and performance, and

(ii) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(4) The warehouse must:

(i) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(ii) Be under the control of the contracting warehouseman at all times, and

(iii) Not be subject to greater than normal risk of fire, flood, or other hazards.

(b) [Reserved]

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 80 FR 138, Jan. 2, 2015]

§ 1427.1083 Bonding requirements for net worth.

(a) A bond furnished by a warehouseman under this subpart must meet the following requirements:

(1) Such bond must be executed by a surety which:

(i) Has been approved by the U.S. Treasury Department, and

(ii) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(2) Such bond must be on the Warehouseman's Bond form, except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(i) CCC determines that such bond provides adequate protection to CCC.

(ii) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(iii) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety

(90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(3) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(4) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(5) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit must be on the Irrevocable Letter of Credit form, or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

(b) [Reserved]

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 80 FR 138, Jan. 2, 2015]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination will be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 56 FR 11502, Mar. 19, 1991; 80 FR 139, Jan. 2, 2015]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard specified in § 1427.1082(c)(2), the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director will consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (FSA). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing will be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman will be considered as a ''participant''; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985, as amended at 80 FR 138, 139, Jan. 2, 2015]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee will be determined and announced annually.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985, as amended at 80 FR 138, Jan. 2, 2015]

§ 1427.1089 [Reserved]

Subpart F [Reserved]

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

SOURCE: 70 FR 67343, Nov. 7, 2005, unless otherwise noted.

§ 1427.1200 Applicability.

(a) This subpart specifies the terms and conditions under which CCC will make payments to eligible domestic users and exporters of extra long staple cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC.

(b) CCC will issue payments to domestic users and exporters in any week following a consecutive 4-week period in which:

(1) The LFQ is less than the USPFE; and

(2) Adjusted LFQ is less than 113 percent of the current crop year loan level for the base quality U.S. Pima cotton.

(c) CCC will prescribe the forms and information collections necessary in administering the ELS cotton competitiveness payment program. Additional terms and conditions for the program are specified in the ELS Cotton Domestic User/Exporter Agreement.

[70 FR 67343, Nov. 7, 2005, as amended at 80 FR 138, Jan. 2, 2015; 86 FR 70707, Dec. 13, 2021]

§ 1427.1201 [Reserved]

§ 1427.1202 Definitions.

The following definitions apply as used in this subpart:

Consumption means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C/F Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

ELS means Extra Long Staple.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C/F Far East, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost and freight (C/F) Far East, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

(1) *Adjusted LFQ* means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and destination ports in the Far East.

(2) *LFQc* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C/F Far East.

(3) *LFQf* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C/F Far East.

USPFE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, C/F Far East.

(1) *USPFEc* means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, C/F Far East.

(2) *USPFEf* means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, C/F Far East.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

(1) Opened by an eligible domestic user on or after February 7, 2014, or

(2) Exported by an eligible exporter on or after February 7, 2014, during a Friday through Thursday period in which a payment rate determined under § 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw, unprocessed motes;

(4) Textile mill wastes; or

(5) Semi-processed or re-ginned, processed motes.

[70 FR 67343, Nov. 7, 2005, as amended at 73 FR 65724, Nov. 5, 2008; 80 FR 138, Jan. 2, 2015]

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or

(2) A person, including a producer or CMA approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

[70 FR 67343, Nov. 7, 2005, as amended at 80 FR 138, Jan. 2, 2015]

§ 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 [Reserved]

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart will be determined as follows:

(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available, the payment rate will be the difference between the USPFE and the LFQ in the fourth week of a consecutive 4-week period in which the USPFE exceeded the LFQ each week, and the adjusted LFQ was less than 113 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the USPFEc, and the USFEf prices first become available and ending the Thursday following July 31, the payment rate will be the difference between the USPFEc and the LFQc in the fourth week of a consecutive 4-week period in which the USPFEc exceeded the LFQc each week, and the adjusted LFQc was less than 113 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the USPFEc and the LFQc are not available, the payment rate may be the difference between the USPFEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf (spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and USPFEc, in combination with the LFQ and USPFE, will, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both USPFEc price and the LFQc are not available, the USPFEf and the LFQf in combination with the USPFE price and LFQ will be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the USPFE, USPFEc, USPFEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the USPFE, USPFEc, or USPFEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate will be zero and will remain zero unless and until sufficient USPFE prices or the LFQ again becomes available, the USPFE, USPFEc, or USPFEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 113 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose lint that is of a suitable quality, without further processing, for spinning, papermaking or bleaching, will be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

[70 FR 67343, Nov. 7, 2005, as amended at 80 FR 139, Jan. 2, 2015]; 86 FR 70707, Dec. 13, 2021

§ 1427.1208 Payment.

(a) Payments under this subpart will be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight will be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart will be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

[70 FR 67343, Nov. 7, 2005, as amended at 80 FR 139, Jan. 2, 2015]

PART 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Sec.

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AUTHORITY: 15 U.S.C. 714b and 714c, and Sec. 10404, Pub. L. 110–246, 122 Stat. 2111.

SOURCE: 76 FR 6316, Feb. 4, 2011, unless otherwise noted.

§ 1429.101 Applicability.

(a) The regulations in this part are applicable to program applicants who produced both 2003- and 2007-crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.

(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed $15 million, allocated as $7.5 million for fresh asparagus and $7.5 million for processed asparagus, less any reserve allocated for disputed claims.

§ 1429.102 Administration.

(a) The Asparagus Revenue Market Loss Assistance Payment Program will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Administration (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.

(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

§ 1429.103 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.

Application period means the 60-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.

Asparagus producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in §1400.3 of this chapter, who is an owner, operator, landlord, tenant, or sharecropper, who directly or indirectly, as determined by the Secretary, shares in the risk of producing asparagus and who is entitled to ownership share in the asparagus crop available for marketing from the farm operation. Growers producing asparagus under contract for crop owners are not considered asparagus producers unless the grower can be determined to have an ownership share of the crop.

Base period means the 2003 crop year of asparagus.

County office means the FSA office responsible for administering CCC programs located in a specific area in a State.

Crop year means the marketing season or year as defined by the National Agricultural Statistics Service (NASS).

Department or USDA means the U.S. Department of Agriculture.

Determined production means, with respect to the base period, the total amount of fresh and processed asparagus specified on the application for payment verified by CCC as having been produced and marketed by the producer in the base period.

Farm Service Agency or FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Fresh asparagus means domestically-produced asparagus that, regardless of

intended use, was marketed as a fresh product without any processing other than cleaning, grading, sorting, trimming, drying, cooling, and packing.

Hundredweight or cwt. means 100 pounds.

Processed asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as frozen, canned, pickled, or otherwise treated or handled in such fashion that the buyer would not consider the asparagus to be consumed as fresh, as determined by CCC.

Reliable production records means evidence provided by the producer to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term ''acceptable production records'' is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

Reported production means the total amount of fresh and processed asparagus produced and marketed by a producer, as specified by a producer on the application for payment.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source.

§ 1429.104 Application requirements.

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from *http://www.sc.egov.usda.gov*.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial market in commercial quantities as determined for this purpose by the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus production or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for

program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

§ 1429.105 Producer eligibility requirements.

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in §1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than $2.5 million for the 3 tax years of 2003 through 2005; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant's claimed share shown on the application will not be paid.

§ 1429.106 Proof of production.

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or a designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.

(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

§ 1429.107 Maximum and final payment rates.

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

(1) $1.06 per pound ($106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and

(2) $1.08 per pound ($108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed calculated using the maximum payment rates specified in paragraph (a) of this section exceeds the funding available for each marketing category, less any reserve that may be created as specified in §1429.109, the payment quantities will be paid at a lower rate determined by dividing the funds available in each marketing category of asparagus, by the payment quantity from

applications received by the end of the application period in each marketing category.

(c) In no event will the payment rate exceed the maximum payment rate for each marketing category of asparagus determined in paragraph (a) of this section.

§ 1429.108 Calculation of individual payments.

(a) Producers will be eligible for payment for both fresh and processed asparagus. CCC will calculate the payment quantity of 2003 fresh and processed asparagus for an asparagus farm operation based on the lower of:

(1) Reported production reflected on the application, or

(2) If applicable, determined production.

(b) The payment quantity will be multiplied by the following:

(1) Each asparagus producer's share, and

(2) The payment rate for the fresh or processed asparagus determined as specified in § 1429.107.

(c) If the total value of payments claimed exceeds the available funding, payments to producers are subject to a $100,000 cap per each of the two program marketing categories (fresh and processed) per asparagus producer as defined in this part, not per ''person'' or ''legal entity'' as those terms might be defined in part 1400 of this title.

§ 1429.109 Availability of funds.

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be $15,000,000 as provided by section 10404 of Public Law 110–246.

(b) Of the available funds, $7,500,000 are allocated for fresh market asparagus production and $7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed $15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

§ 1429.111 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds. Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1429.112 Death, incompetence, or disappearance.

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

§ 1429.113 Maintaining records.

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

§ 1429.114 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an ALAP Program application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1429.115 Miscellaneous provisions and appeals.

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

PART 1430—DAIRY PRODUCTS

Subpart A—Margin Protection Program for Dairy Producers

Sec.

1430.100 Purpose.
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Subpart A—Margin Protection Program for Dairy Producers

SOURCE: 79 FR 51462, Aug. 29, 2014, unless otherwise noted.

§ 1430.100 Purpose.

The regulations in this subpart apply for the Margin Protection Program for Dairy (MPP-Dairy), which is authorized by sections 1401 through 1410 of the Agricultural Act of 2014 (Pub. L. 113–79, 7 U.S.C. 9051–9060). MPP-Dairy is intended to provide eligible dairy producers risk protection against low margins resulting from a combination of low milk prices and high feed costs.

§ 1430.101 Administration.

(a) MPP-Dairy is administered under the general supervision of the Executive Vice President, CCC, or a designee, and will 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.

(c) The State committee will 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 MPP-Dairy or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify MPP-Dairy requirements not statutorily required when failure to meet such requirements does not adversely affect the operation of MPP-Dairy.

(f) A representative of CCC will execute a contract for registration in MPP-Dairy and related documents under the terms and conditions determined and announced by the Deputy Administrator on behalf of CCC. Any document not under such terms and conditions, including any execution before the date authorized by CCC, will be null and void.

§ 1430.102 Definitions.

The definitions in this section are applicable for the purposes of administering MPP-Dairy established by this subpart.

Actual dairy production margin means the difference between the all-milk price and the average feed cost, as calculated under § 1430.110. If the calculation would produce a negative number the margin will be considered to be zero.

Administrative county office means the county office designated to make determinations, handle official records, and issue payments for the producer as specified in 7 CFR part 718.

All-milk price means the national average price received, per hundredweight of milk, by dairy operations for all milk sold to dairy plants and milk dealers in the United States, as determined by the Secretary.

AMS means the Agricultural Marketing Service of the USDA.

Annual election period for MPP-Dairy means the period, each calendar year, established by the Deputy Administrator, for a dairy operation to register initially to participate in MPP-Dairy, pay associated administrative fees, and applicable premiums, or, if already registered as a participating dairy operation, to make annual coverage elections for an applicable calendar year.

Average feed cost means the national average cost of feed used by a dairy operation to produce a hundredweight of milk, as determined under § 1430.110(b).

Buy up coverage means margin protection coverage for a margin protection level above $4 per hundredweight of milk.

Catastrophic level coverage means $4 per cwt margin protection coverage and a coverage percentage of 90 percent, with no premium assessed.

CCC means the Commodity Credit Corporation of the U.S. Department of Agriculture.

Commercially marketed means selling whole milk to either the market to which the dairy operation normally delivers and receives monetary compensation or other similar markets.

Consecutive 2-month period means a 2-month period consisting, respectively, of the months of January and February; March and April; May and June; July and August; September and October; or November and December.

Contract means the terms and conditions to register for the MPP-Dairy as executed on a form prescribed by CCC and required to be completed by the dairy operation and accepted by CCC, including any contract modifications made in an annual election period before coverage for the applicable calendar year commences.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

Covered production history is equal to the production history of the operation multiplied by the coverage percentage

selected by the participating dairy operation.

Dairy operation means a dairy operation as defined pursuant to the criteria and procedures under the Milk Income Loss Contract (MILC) Program or any dairy facility that was part of a single dairy operation that participated in the MILC Program as of February 7, 2014. Operations that are determined to be ''new operations'' under this subpart, will be subject to the ''affiliation'' test under §1430.103(e) if the operation elects to participate in MPP-Dairy separately. A single dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in MPP-Dairy and can only submit one application. All dairy operations under this part shall commercially market milk produced from cows as a single unit located in the United States in which each dairy producer:

(1) Has risk in the production of milk in the dairy operation; and

(2) Makes contributions, including land, labor, management, equipment, or capital, to the dairy operation at least commensurate to the producers' share of the operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, or designee.

Farm Service Agency or FSA means the Farm Service Agency of the USDA.

Hundredweight or cwt means 100 pounds.

Intergenerational transfer means the one-time establishment of additional production history for a participating dairy operation when a lineal descendant, who is a son, daughter, grandchild, or spouse of a child or grandchild of a current member joins a participating dairy operation.

Milk Income Loss Contract Program or MILC means the program established under section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) and the regulations found in subpart B of this part.

Milk marketing means a sale of milk for which there is a verifiable production record for milk commercially marketed.

NASS means the National Agricultural Statistics Service of the USDA.

New operation means a dairy operation that did not commercially market milk at least 12 full months as of February 7, 2014.

Participating dairy operation means a dairy operation that registers to participate in MPP-Dairy under this part.

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, shares in the risk of producing milk, makes contributions including land, labor, management, equipment, or capital to the dairy operation at least commensurate to the producers' share of the operation, to the dairy operation of the individual or entity, as determined by the Deputy Administrator.

Production history means the production history determined for a participating dairy operation when the participating dairy operation registers in MPP-Dairy.

RMA means the Risk Management Agency of the USDA.

Secretary means the Secretary of Agriculture.

United States means the 50 States of the United States of America, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

USDA means the United States Department of Agriculture.

Verifiable production records mean evidence that is used to substantiate the amount of production commercially marketed and that can be verified by CCC through an independent source.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

§ 1430.103 Eligible dairy operations.

(a) The eligibility requirements for a dairy operation to register in MPP-Dairy and receive payments under this subpart, are to:

(1) Produce milk from cows in the United States that is marketed commercially at the time of each annual election in MPP-Dairy;

(2) Submit accurate and complete information as required by the this subpart;

(3) Provide proof of milk production marketed commercially by all persons in the dairy operation to establish production history;

(4) Not participate in the Livestock Gross Margin for Dairy (LGM-Dairy) Program administered by the USDA Risk Management Agency (RMA) under the Federal Crop Insurance Act (7 U.S.C. 1501–1536), except to the extent permitted by this subpart, provided that under no circumstance may the operation receive coverage for the same period in MPP-Dairy for which payments have been received or earned under LGM-Dairy; and

(5) Pay required administrative fees for participation in MPP-Dairy as specified in this subpart and any premiums, if applicable, as specified in this subpart.

(b) A person or entity covered by §1400.401 of this chapter (hereafter ''foreign person'') must meet the eligibility requirements contained in that section to receive payments under this part. A dairy operation with ineligible foreign persons as members will have any payment reduced by the proportional share of such members.

(c) Federal agencies and States, including all agencies and political subdivisions of a State, are not eligible for payments under this subpart.

(d) As specified in §1430.104, each dairy operation is required to submit a separate registration to be eligible for MPP-Dairy coverage and payment. A producer who owns more than one eligible dairy operation may participate separately for each dairy operation; each eligible dairy operation must be registered separately, subject to the affiliation test for new operations.

(e) A new dairy operation will be treated as an affiliated dairy operation and not be treated as a separate dairy operation under MPP-Dairy if producers that collectively own more than 50 percent of the new dairy operation also collectively own more than 50 percent interest in another dairy operation registered in MPP-Dairy.

§1430.104 Time and method of registration and annual election.

(a) A dairy operation may register to participate in MPP-Dairy by submitting a contract prescribed by CCC. Dairy operations may obtain a blank contract in person, by mail, or by facsimile from any county office. In addition, dairy operations may download a copy of the forms at *http://www.sc.egov.usda.gov*.

(b) Dairy operation shall submit completed contracts and any other supporting documentation during the annual election period established by the Deputy Administrator, to the administrative county office serving the dairy operation.

(1) A new dairy operation that has been established after the most recent election period is required to submit a contract within the first 90 calendar days from the date on of which the dairy operation first commercially markets milk and may elect coverage that begins the next consecutive 2-month period following the submission date of the registration and coverage election; or

(2) A new dairy operation that does not meet the 90 day requirement of paragraph (b)(1) of this section cannot enroll until the next annual election period for coverage for the following calendar year.

(c) Registration requests and coverage elections are to be submitted in time to be received at FSA by the close of business on the last day of the annual election period established by the Deputy Administrator.

(1) The applicable year of coverage for contracts arising from accepted registrations in the annual election period will be the following calendar year.

(2) Registration requests and coverage elections submitted after the applicable allowed time for submission will not be considered.

(3) During an annual election period, participating dairy operations may change coverage elections for the following calendar year.

(d) To receive margin protection coverage, separate registrations are required for each separately constituted dairy operation. If a dairy producer operates more than one separate and distinct operation, the producer registers each operation for each operation to be eligible for coverage.

(e) A participating dairy operation must elect, during the applicable annual election period and by using the form prescribed by CCC, the coverage level threshold and coverage percentage for that participating dairy operation for the applicable calendar year.

(1) Once the initial completed registration is submitted and approved by CCC, it cannot be cancelled by the participating dairy operation through December 31, 2018; however, each calendar year subsequent to the initial registration of the participating dairy operation, it may elect to change the coverage level threshold and coverage percentage, on a form prescribed by CCC, during the election period for the applicable subsequent calendar year. For dairy operations that want to continue coverage levels established in the prior calendar year, the Deputy Administrator will establish a procedure to allow such coverage levels to continue that will include the requirement of a timely payment of administrative fees and any premiums, if applicable.

(2) If the operation fails to file an update of its election during the annual election period, the coverage level will be reduced to the catastrophic level coverage, but such coverage will only be provided if the participating dairy operation pays the annual administrative fee for the relevant calendar year and submits the appropriate CCC forms.

(3) All producers in the participating dairy operation must agree to the coverage level threshold and coverage percentage elected by the dairy operation.

(f) By registering to participate or receive payment under MPP-Dairy, producers in the participating dairy operation certify to the accuracy and truthfulness of the information in their applications and supporting documentation.

(1) All producers in a participating dairy operation must sign and certify all submissions made under MPP-Dairy that relate to the level of coverage.

(2) All information provided is subject to verification. FSA may require a dairy operation to provide documentation to support all verifiable records. Furnishing the information is voluntary; however, without it MPP-Dairy benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines, other penalties, or sanctions.

(g) At the time the completed contract is submitted to FSA for the first year in which the dairy operation is to participate in MPP-Dairy, the dairy operation must also submit a separate form, as specified by CCC, to establish the production history for the dairy operation.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

§ 1430.105 Establishment and transfer of production history for a participating dairy operation.

(a) A participating dairy operation must provide all information required by FSA to establish the production history of the participating dairy operation for purposes of participating in MPP-Dairy. Except as provided in paragraph (b) of this section relating to new dairy operations, FSA will establish the production history for a dairy operation for margin protection as the highest annual milk marketings of the participating dairy operation during any one of the 2011, 2012, or 2013 calendar years.

(1) All producers in the participating dairy operation are required to provide adequate proof of the dairy operation's quantity of milk commercially marketed, to establish the production history for the dairy operation.

(2) All information provided is subject to verification, spot check and audit by FSA. If the dairy operation does not provide to the satisfaction of FSA documentation requested to substantiate the production history of the highest annual milk marketings for the participating dairy operation, then, the registration will not be approved.

(b) A participating dairy operation that did not produce and commercially market milk at least 12 full months as

of February 7, 2014, will be considered a new dairy operation. To establish the production history for such a new dairy operation the new dairy operation is required to elect one of the following methods:

(1) The volume of the actual milk marketings for the months the dairy operation has been in operation, extrapolated to a yearly amount based on a national seasonally adjusted index, as determined by the Deputy Administrator, to account for differences in milk production during the year; or

(2) An estimate of the actual milk marketings of the dairy operation based on the herd size of the dairy operation relative to the national rolling herd average data published by the Secretary.

(c) If FSA determines that the new enterprise was formed for the purpose of circumventing MPP-Dairy provisions, including, but not limited to, reconstituting a dairy operation to receive additional benefits, or establishing new production history, that enterprise will not be considered a new dairy operation for the purpose of establishing production history.

(d) Once the production history of a participating dairy operation is established as specified in paragraphs (a) or (b) of this section, the production history will be adjusted upward by FSA only to reflect any increase in the national average milk production, as determined by the Deputy Administrator, except as provided by paragraph (g) of this section.

(e) The production history may be transferred from one dairy facility to another:

(1) Producers of a dairy operation may relocate the dairy operation to another location and the production history of the original operation may be transferred to the new location and may be added to production history at the new location that has not been transferred;

(2) Producers of a dairy operation may transfer ownership of a dairy operation with its associated production history, but if the producers start a new operation such new operation may only be eligible for new production history if the new operation is otherwise not affiliated with participants in MPP-Dairy as described in §1430.103(e); or

(3) Producers of more than one dairy operation that separately participate in MPP-Dairy may transfer the production histories of these dairy operations into a previously unregistered dairy operation.

(f) If CCC waives the obligation, under MPP-Dairy of a participating dairy operation due to death or retirement of the producer or of the permanent dissolution of the dairy operation or under other circumstances as determined by the Deputy Administrator, FSA may reestablish the production history provided that the production history has not been transferred.

(g) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 4 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes effect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring between January 1, 2016, and June 30, 2016, the dairy operation must notify FSA during the registration and annual coverage election period for coverage year 2017, established by the Deputy Administrator. The operation

has the option of the additional production history taking effect beginning either with the consecutive 2-month period following notification, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in §1430.107(a)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

(2) All of the items specified in this paragraph must be documented in the notification to FSA and self-certified by the current and new member(s) for the intergenerational transfer to be considered eligible for additional production history, except that intergenerational transfers that occurred in 2014 and 2015 that otherwise meet the requirements of this paragraph will be considered during the registration and annual coverage election period for coverage year 2017 established by the Deputy Administrator for the purposes of adding the new member(s) to the participating dairy operation. However, there will not be any retroactive payments based on a production history increase for the intergenerational transfer. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

(i) Documentation that the new member(s) joining the operation have purchased the dairy cows being added to the dairy operation;

(ii) Certification that each new member will have a share of the profits or losses from the dairy operation commensurate with such person's contributions to the dairy operation;

(iii) Certification that each new member has a significant equity ownership in the participating dairy operation at levels determined by the Deputy Administrator and announced on the FSA Web site, *www.fsa.usda.gov;*

(iv) Certification that each new member is a lineal descendant or spouse thereof of a current member of the participating dairy operation;

(v) Agreement that each new member will contribute labor in the dairy operation at a minimum of 35 hours per week or have a plan for transition to full-time, subject to FSA county committee review and approval, if only working seasonally or part-time;

(vi) Certification that the dairy operation will be the principal source of non-investment earned income for each new member; and

(vii) Documentation of the participating dairy operation's current annual marketings as of the date of the intergenerational transfer.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

§1430.106 Administrative fees.

(a) Dairy operations must pay an initial administrative fee to CCC in the amount of $100 at the time of initial registration to participate in MPP-Dairy. Each approved participating dairy operation must also pay a $100 administrative fee each year through 2018. Annual administrative fees are due and payable to CCC through the administrative county FSA office no later than the close of business on the last day of the annual election period established by the Deputy Administrator for each applicable calendar year of margin protection coverage under MPP-Dairy. The administrative fee paid is non-refundable.

(b) The required annual administrative fee is per dairy operation. Therefore, multiple dairy producers in a single participating dairy operation are required to pay only one annual administrative fee for the participating dairy operation. Conversely, in the case of a dairy producer that operates more than one dairy operation, each participating dairy operation is required to pay a separate administrative fee annually.

(c) Failure to pay the administrative fee timely will result in loss of margin protection coverage for the applicable calendar year. The payment will still be due, as provided in §1430.109. However, coverage for the applicable calendar year, at the catastrophic level only, may be reinstated if the administrative fee is paid late, effective the consecutive 2-month period following payment of the late-filed administrative fee plus applicable charges, if any,

and submission to FSA of the appropriate CCC form.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21705, Apr. 13, 2016]

§ 1430.107 Buy-up coverage.

(a) For purposes of receiving buy-up MPP-Dairy coverage, a participating dairy operation may annually elect during an annual election period the following for the succeeding calendar year:

(1) A coverage level threshold for margins that, per cwt, is equal to one of the following: $4.50, $5, $5.50, $6, $6.50, $7, $7.50, or $8; and

(2) A percentage of coverage for the production history from 25 percent to 90 percent, in 5-percent increments.

(b) In the absence of any such election, the applicable coverage level provided, with no premium due, is catastrophic level coverage.

(c) A participating dairy operation that elects margin protection coverage above $4 is required to pay an annual premium based on coverage level and covered production history in addition to the administrative fee. Tier 1 applies to covered production history up to and including 4 million pounds; Tier 2 applies to covered production history above 4 million pounds.

(d) The premium per cwt of milk, based on the elected percentage of coverage of production history is specified in the following table.

TABLE TO § 1430.107(d)

Coverage level (margin)	Tier 1 premium per cwt (for the covered production history that is 4 million pounds or less)	Tier 2 premium per cwt (for the part of covered production history over 4 million pounds)
$4.50	$0.010	$0.020
$5.00	0.025	0.040
$5.50	0.040	0.100
$6.00	0.055	0.155
$6.50	0.090	0.290
$7.00	0.217	0.830
$7.50	0.300	1.060
$8.00	0.475	1.360

(e) The annual premium due for a participating dairy operation is calculated by multiplying:

(1) The covered production history; and

(2) The premium per cwt of milk specified in paragraph (d) of this section for the coverage level elected by the dairy operation.

(f) In the case of a new dairy operation that first registers to participate in MPP-Dairy for a calendar year after the start of the calendar year, the participating dairy operation is required to pay a pro-rated premium for that calendar year based on the portion of the calendar year for which the participating dairy operation is eligible, and for which it purchases the coverage.

(g) A participating dairy operation is required to pay the annual premium calculated as specified in paragraphs (d) and (e) of this section for the applicable calendar year, according to either of the following options:

(1) In total at time of submission of coverage election to FSA; or

(2) In total no later than September 1 of the applicable calendar year of coverage, unless otherwise specified by the Deputy Administrator.

(h) If the total premium is not paid for an applicable calendar year of coverage as specified in paragraph (g) of this section, the participating dairy operation will only be covered at catastrophic level coverage beginning with the September-October consecutive 2-month period and for the remainder of the applicable coverage year.

(i) Annual premium balances due CCC from a participating dairy operation for a calendar year of coverage must be paid in full no later than September 1 of the applicable calendar year or within a grace period determined by the Deputy Administrator, if applicable.

(j) A participating dairy operation with an unpaid premium balance for a calendar year of coverage will lose eligibility for buy-up coverage for the subsequent coverage year if the premium is not paid in full by the close of the coverage election period, and will have its current buy-up level coverage reduced to the catastrophic level, as provided in § 1430.109.

(k) The Deputy Administrator may waive the obligation to pay the premium, or refund the premium paid, of a participating dairy operation for a calendar year, in cases that include, but are not limited to, as determined by

the Deputy Administrator, death, retirement, permanent dissolution of a participating dairy operation, or other circumstances determined by the Deputy Administrator.

(l) MPP-Dairy administrative fees and premiums are required to be paid by a negotiable instrument satisfactory to FSA and made payable to CCC and either mailed to or provided in person to the administrative county office or other location designated by FSA.

(m) In the case of an intergenerational transfer, the additional premium, if any, is due September 1 if the notification of the transfer is made to FSA between January 1 and September 1 of the applicable calendar year, and immediately, if the notification is made between September 2 and December 31, unless otherwise specified by the Deputy Administrator.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21705, Apr. 13, 2016]

§ 1430.108 Margin protection payments.

(a) *When do MPP-Dairy payments trigger?* An MPP-Dairy payment will be made to a participating dairy operation for any consecutive 2-month period when the average actual dairy production margin for the consecutive 2-month period falls below the coverage level threshold in effect for the participating dairy operation. Payments may trigger at either the elected buy-up level if purchased by the dairy operation, or the catastrophic level.

(b) *How will payments be calculated?* Whether payments trigger at the catastrophic level or at the buy-up level, the payments will be calculated as explained in this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 90 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 90 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment—first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 90 percent; the result of these two calculations will be added together to determine the payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history divided by 6 as follows:

(1) *Payment rate.* The amount by which the coverage level exceeds the average actual dairy production margin for the 2-month period;

(2) *Coverage percentage.* The coverage percentage; and

(3) *Production history.* The production history of the dairy operation, divided by 6.

(c) *Example of payment for buy-up coverage of less than 90 percent when catastrophic level also triggers a payment.* If the dairy operation purchased buy-up level coverage at less than 90 percent of production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 90 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 40 percent for total coverage of 90 percent.

[81 FR 21706, Apr. 13, 2016]

§ 1430.109 Effect of failure to pay administrative fees or premiums.

(a) A participating dairy operation that fails to pay a required administrative fee or premium payment due upon application to MPP-Dairy or for a calendar year of coverage:

(1) Remains legally obligated to pay such administrative fee or premium, as applicable; and

(2) Upon such failure to pay when due after initial approved registration, loses coverage under MPP-Dairy until such administrative fee or premium is paid in full, and once paid, coverage will begin with the next consecutive 2-month period. Failure to pay the premium fee when due will reduce coverage to the catastrophic level for the September and October period and November and December period in that coverage year.

(b) CCC may take such actions as necessary to collect unpaid administrative fees and premium payments.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21706, Apr. 13, 2016]

§ 1430.110 Calculation of average feed cost and actual dairy production margins.

(a) Payments are made to a participating dairy operation as specified in this subpart only when, for a consecutive 2-month period, the calculated average actual dairy production margin is below the coverage level in effect for the participating dairy operation. That margin will be calculated on a national basis and is the amount by which for the relevant consecutive 2-month period, the all milk price exceeds the average feed cost for dairy producers. All calculations will be made on a per cwt basis. The average actual dairy production margin calculation applies to all participating dairy operations. The calculations are not made on an operation by operation basis or on their marketings.

(b) For calculating the national average feed cost that dairy operations use to produce a cwt of milk, the following three items will be added together:

(1) The product determined by multiplying 1.0728 by the price of corn per bushel;

(2) The product determined by multiplying 0.00735 by the price of soybean meal per ton; and

(3) The product determined by multiplying 0.0137 by the price of alfalfa hay per ton.

(c) To make those feed calculations, the Deputy Administrator on behalf of CCC will use the following full month data:

(1) For corn, the full month price received by farmers during the month in the United States as reported in the monthly Agricultural Prices report by USDA NASS;

(2) For soybean meal, the Central Illinois soybean meal price delivered by rail as reported in the USDA AMS Market News-Monthly; and

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS.

(d) The national average feed cost data for corn, soybean meal, and alfalfa hay used in the calculation of the national average feed cost to determine the actual dairy production margin for the relevant period, will be the data reported in the publication the following month. (For example, preliminary May prices for corn and soybean meal were reported in the May Agricultural Prices publication but full month May prices will be available in the June publication, and those will be the prices used).

(e) The actual dairy production margin for each consecutive 2-month period, will be calculated by subtracting:

(1) The average feed cost for that consecutive 2-month period, determined under paragraph (b) of this section; from

(2) The all-milk price for that consecutive 2-month period.

§ 1430.111 Relation to RMA's LGM-Dairy Program.

(a) A producer may participate in either MPP-Dairy through a dairy operation or the LGM-Dairy program operated by RMA, but not both.

(b) Producers in dairy operations participating in MPP-Dairy must certify at the time of registration and annually during each coverage election period that they will not have an LGM-Dairy policy in effect during the calendar year the dairy operation is requesting coverage.

(c) A participating dairy operation may be required to provide proof, to the satisfaction of FSA, of the cancellation or expiration of any previous LGM-Dairy policy.

[81 FR 21706, Apr. 13, 2016]

§ 1430.112 Multi-year contract.

(a) Participating dairy operations enrolled in MPP-Dairy are enrolled until December 31, 2018. As such, a participating dairy operation is obligated to pay initial and annual administrative fees and applicable premiums each succeeding calendar year following the date the contract is first entered into through December 31, 2018.

(b) Failure to pay administrative fees and premiums will result in the loss or reduction of coverage, as applicable, and the participating dairy operation

remains obligated to pay such administrative fees and premiums as specified in § 1430.109.

(c) If a participating dairy operation goes out of business as described in § 1430.107(k) before December 31, 2018, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21706, Apr. 13, 2016]

§ 1430.113 Contract modifications.

(a) Producers in a participating dairy operation must notify FSA immediately of any changes that may affect their participation in MPP-Dairy under this subpart. Changes include, but are not limited to death of a producer on the contract, producer joining the operation, producer exiting the operation, relocation of the dairy operation, transfer of shares by sale or other transfer action, or dairy operation reconstitutions as provided in § 1430.114.

(b) Payment of any outstanding premium or administrative fee for a participating dairy operation must be paid in full before a transfer of shares by sale or any other change in producers on the contract originally submitted to FSA may take effect. Otherwise, producer changes will not be recognized until the following annual election period, and only if at that time all associated premiums and administrative fees from any previous calendar year of coverage have been paid in full.

§ 1430.114 Reconstitutions.

(a) A participating dairy operation under this subpart may reorganize or restructure itself in such a way that the constitution or makeup of its operation is reconstituted in another organization framework. However, any participating dairy operation that reorganizes or restructures after enrolling is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of establishing an alternative production history for a participating dairy operation or was reorganized or restructured to otherwise circumvent any MPP-Dairy provision under this subpart (including the tier system for premiums) or otherwise to prevent the accomplishment of the purpose of the program.

(b) A participating dairy operation that FSA determines has reorganized solely to establish a new production history or to circumvent the determination of applicable fees or premiums based on an established production history determined under this subpart will be considered to have failed to meet MPP-Dairy requirements and, in addition to other sanctions or penalties that may apply, will not be eligible for MPP-Dairy payments.

(c) Under no circumstance, except as approved by the Deputy Administrator or provided for in these regulations, will the reconstitution or restructure of a participating dairy operation change the determined production history for the operation. The Deputy Administrator may, however, adjust the production history of a participating dairy operation if there is a calculation error or if erroneous information has been supplied by or on behalf of the participating dairy operation.

§ 1430.115 Offsets and withholdings.

FSA may offset or withhold any amount due FSA under this subpart under the provisions of part 1403 of this chapter or any successor regulations, or any other authorities that may allow for collection action of that sort.

§ 1430.116 Assignments.

Any producer may assign a payment to be made under this subpart in accordance with part 1404 of this chapter or successor regulations as designated by the Secretary or as allowed by the Deputy Administrator in writing.

§ 1430.117 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under parts 11 or 780 of this title.

§ 1430.118 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, all or any part of a payment otherwise due

a person or legal entity on all participating dairy operations in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this subpart or adopts or participates in adopting a scheme or device designed to evade this subpart, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects an registration or coverage election;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements or other arrangements to conceal the interest of a person or legal entity in a dairy operation for the purpose of obtaining MPP-Dairy payments the individual or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No milk is produced and commercially marketed by a participating dairy operation;

(ii) The participating dairy operation has no appreciable assets;

(iii) The only source of capital for the dairy operation is the MPP-Dairy payments; or

(iv) The represented dairy operation exists mainly for the receipt of MPP-Dairy payments.

(b) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of this subpart, such person or legal entity will be ineligible to receive MPP-Dairy payments in the year such scheme or device was adopted and the succeeding year.

(c) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, in violation of the requirements of this subpart will be subject to a 5-year denial of all program benefits. Such other equally serious actions may include, but are not limited to:

(1) Knowingly engaging in, or aiding in the creation of a fraudulent document or statement;

(2) Failing to disclose material information relevant to the administration of the provisions of this subpart, or

(3) Engaging in any other actions of a person or legal entity determined by the Deputy Administrator to be designed, or intended to, circumvent the provisions of this subpart.

(d) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance with the interest held by the person or legal entity in any other legal entity or joint operations; and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

§ 1430.119 Estates, trusts, and minors.

(a) MPP-Dairy 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 benefits under this subpart is also required to:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by law;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable MPP-Dairy 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.

§ 1430.120 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits under this subpart, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.121 Maintenance and inspection of records.

(a) Participating dairy operations are required to maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart, as may be requested by CCC or FSA. Such records and accounts are required to be retained for 3 years after the date of MPP-Dairy payments to the participating dairy operation. Destruction of the records 3 years after the date of payment will be at the risk of the party undertaking the destruction.

(b) A participating dairy operation is required to allow authorized representatives of CCC, the Secretary, or the Comptroller General of the United States to 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 producer or dairy operation that does not comply with the provisions of paragraphs (a) or (b) of this section, or that otherwise receives a payment for which it is not eligible, is liable for that payment and is required to repay it to FSA, with interest to run from the date of disbursement.

§ 1430.122 Refunds; joint and several liability.

(a) Any legal entity, including joint operations, joint ventures and partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute, regulation, or provision of law.

§ 1430.123 Violations of highly erodible and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1430.124 Violations regarding controlled substances.

The provisions of § 718.6 of this title apply to this part.

Subpart B—Milk Income Loss Contract Program

SOURCE: 67 FR 64476, Oct. 18, 2002, unless otherwise noted.

§ 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. In administering this program, for purposes of determining what is a ''dairy operation'' and its eligibility under this program, those determinations will be made in the same manner as was done for the Dairy Market Loss Assistance (DMLA) contracts in the State in which the dairy is located. New MILC operations, which is to say those operations that did not participate in the MILC program for marketings prior to FY 2008, must be unaffiliated with any other DMLA or MILC operations.

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 at a time relevant to this program by cows in the United States and marketed commercially by a producer in a participating State.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Federal Milk Marketing Order means an order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

Fiscal Year or FY means the year beginning October 1 and ending the following September 30. Fiscal years will be designated for this part by year by reference to the calendar year in which it ends. For example, FY 2009 is from October 1, 2008, through September 30, 2009 (inclusive).

Hundredweight or cwt. means 100 pounds.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

MILC means the Milk Income Loss Contract program or the form upon which CCC and the producer agree to the terms of the payment to be made under the MILC program.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Participating State means each of the 50 States in the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Payment pounds means the pounds of milk production for which an operation is eligible to be paid under this subpart.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien in the United States, and

who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of this operation.

United States means the 50 States of the United Sates of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Verifiable production records means evidence that is used to substantiate the amount of production marketed and that can be verified by CCC through an independent source.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19622, Apr. 17, 2006; 73 FR 73776, Dec. 4, 2008]

§ 1430.203 Eligibility.

To be eligible to receive payments under this subpart, a dairy operation must:

(a) Have produced milk in the United States and commercially marketed the milk produced anytime during the period of October 1, 2007, through September 30, 2012;

(b) Enter into a MILC during the contract application period;

(c) Agree to all terms and conditions in the MILC and those that are otherwise contained in this subpart and comply with instructions issued by CCC;

(d) Provide proof of monthly milk production commercially marketed by all persons in the dairy operation during the contract period, to determine the total pounds of milk that will be converted to hundredweight (cwt.) used for payment;

(e) Submit timely production evidence according to §1430.209;

(f) Be actively engaged in the business of producing and marketing agricultural products anytime during the period of October 1, 2007, through September 30, 2012;

(g) Meet all adjusted gross income eligibility requirements of part 1400 of this chapter as regards any person or entity seeking to receive payment under this part. No person or entity may, generally, receive any payment for FY 2009 marketings and subsequent marketings if their nonfarm yearly income for the relevant base period for the relevant marketings as determined under the adjusted gross income rules (as in effect when the payment is sought) is over $500,000 as determined under this subpart. Further, for entities an otherwise due payment will be reduced commensurately to the extent that any person with an interest in the entity, as determined under the adjusted gross income rules had such income over that limit for the relevant period;

(h) Have submitted a contract during the applicable contract period for FYs 2008 through 2012:

(1) Except for 2009, and subject to the start month provision of §1430.205, must have for any fiscal year or month for which payment is sought to be paid submitted the FY 2008 through 2012 contract before the end of that fiscal year or month or

(2) For FY 2008 payments, if payments are generated under this part for that fiscal year, must have submitted a contract for the FY 2008 through 2012 program by October 1, 2009 and for FY 2009 the contract must have been submitted by the month for which payment is first sought except to the extent that §1430.205 explicitly permits the operation to pick a start month in advance of the month in which the contract is submitted; and

(i) Must not, if it did not participate in the preceding MILC program for fiscal years prior to FY 2008, be affiliated with any other dairy operation.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19622, Apr. 17, 2006; 73 FR 73766, Dec. 4, 2008]

§ 1430.204 Requesting benefits.

(a) A request for benefits or contract application, under this subpart must be submitted on a form as prescribed by the Agency. Contract applications shall be submitted to the FSA office serving the county where the dairy operation is located. Contract applications must be received by FSA by the close of business on the date established by the Deputy Administrator.

Contract applications received after such date shall be disapproved.

(b) The dairy operation requesting MILC benefits must certify the accuracy and truthfulness of the information in their contract application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department to verify any information provided will result in disapproval.

(c) Contract applications will be approved by execution by FSA and producer of a MILC. All persons who share in the risk of a dairy operation's total production must sign and certify the contract application.

§ 1430.205 Selection of starting month.

(a) A dairy operation that enters into a MILC contract with CCC must designate the starting month for each fiscal year for the calculation of payments and pound limits for the operation. Once a start month is chosen for a fiscal year the corresponding month will be the start month for each subsequent fiscal year unless changed by an affirmative request in writing on a form approved by CCC. The production start month must be selected on or before the 14th of the month before the month for which payment is sought. If such date falls on a weekend, the start month selection must be made on the last business day preceding the weekend. A dairy operation cannot select as the start month for payment a month which:

(1) Has already begun, except as provided in paragraph (c)(1) of this section;

(2) Has already passed; or

(3) During which no milk production was produced by the dairy operation.

(b) For FY 2009, if the operation signs its FY 2008 through 2012 MILC contract within 30 days of the beginning of the application period it can pick any preceding FY 2009 month as its start month for that period or can use the normal rule of paragraph (c) of this section to pick the start month.

(c) Except as provided in paragraph (b) of this section, the start month for a fiscal year may only be

(1) For the fiscal year in which the contract is submitted, the month the contract is submitted or

(2) For a fiscal year that has not yet begun, any month, provided that a month may not be selected after the 14th of the preceding month.

(d) Dairy operations may change the production start month on or before the 14th day of the month previously selected.

(e) If a change of the production starting month is not made by the dates required by paragraph (d) of this section, the MILC production starting month cannot be changed until the next fiscal year. If the selected MILC production starting month is never modified, it will remain the same throughout the duration of the contract.

(f) MILC payments will be made consecutively to the dairy operation on a monthly basis after the production starting month has been designated until the earlier of the following:

(1) Payment quantity is reached in accordance with § 1430.207; or

(2) The end of the applicable fiscal year.

(g)(1) MILC production start month selections made during the signup period designated by CCC may be made as provided in paragraph (b) of this section, otherwise MILC production start month selections must be made in accordance with paragraph (c) of this section. If a payment rate is not in effect during the production start month selected by the dairy operation, payments to the dairy operation will be issued based on the next consecutive month with a payment rate in effect following the MILC production start month selected by the dairy operation. Production in months in which the pay formula does not produce a payment will not count against the fiscal year's poundage limit for the operation.

(2) Dairy operations with MILC production start months that begin with the month a MILC contract is submitted to FSA or that begin with the first month of the fiscal year with an effective payment rate will receive payments made by CCC consecutively on a monthly basis, if otherwise provided for in this part, until the earlier of the following:

(i) The maximum payment quantity for the fiscal year or month is reached

as determined in accordance with §1430.207 or

(ii) The end of the applicable fiscal year.

(h) All producers involved in the dairy operation must agree to the month designated. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity.

[71 FR 19622, Apr. 17, 2006, as amended at 73 FR 73766, Dec. 4, 2008]

§1430.206 [Reserved]

§1430.207 Dairy operation payment quantity.

(a) The applicant's payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation per fiscal year.

(b) The maximum quantity of eligible production for which dairy operations, per separate and distinct operation, are eligible for payment per fiscal year under this subpart will be:

(1) 2,400,000 pounds (24,000 cwt.) for FY 2008 (October 1, 2007, through September 30, 2008);

(2) 2,985,000 pounds (29,850 cwt.) for FY 2009 (October 1, 2008 through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011) and FY 2012 (October 1, 2011, through September 30, 2012), provided further an operation may receive payment for September, 2012, marketings only if its pre-September FY 2012 marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's FY 2012 marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.

(c) In accordance with these regulations, the Deputy Administrator will determine what is a separate and distinct operation. That decision will be final

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73767, Dec. 4, 2008]

§1430.208 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations when the Boston Class I milk price under the applicable Federal milk marketing order is below $16.94 per cwt. No payments will be made to dairy operations for marketings during the months that the Boston Class I milk price under the applicable milk marketing order is equal to or exceeds $16.94.

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from $16.94 the Class I milk price per cwt. in Boston;

(2) Multiplying the difference by 34 percent for marketings during the period beginning on October 1, 2007, and ending on September 30, 2008;

(3) Multiplying the difference by 45 percent for marketings during the period beginning on October 1, 2008, and ending on August 31, 2012; and

(4) Multiplying the difference by 34 percent for marketings in September 2012.

(c) The payment rate as calculated as specified in paragraph (b) of this section, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set in paragraphs (c)(1) and (c)(2) of this section. The National Average Dairy Feed Ration Cost per cwt. for each month will be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound noted on page 33 of the USDA monthly Agricultural Prices publication (including the data and factors noted in footnote 4). The payment rate adjustment for Entire Month feed prices will be determined by increasing $16.94 by the percentage that is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds $7.35 per cwt. (except that $7.35 will be $9.50 for September 2012 marketings.)

(d) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight and

(2) Multiplying the payment rate determined in paragraphs (b) and (c) of

this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to §1430.205 and other provisions of this subpart.

(3) Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(e) Payments under this subpart may be made to a dairy operation only up to the maximum production limitations set in §1430.207(b) of eligible production per applicable fiscal year.

(f) Dairy operations receiving benefits under this subpart, will receive earned payments on a monthly basis according to the MILC contract, to the extent practicable, not later than 60 days after the later of production evidence and all supporting documents for the applicable month are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, as applicable. Payments issued by CCC more than 60 days after the later of all production evidence and supporting documentation are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, whichever is later, will be subject to prompt payment interest as allowed by law. However, CCC will endeavor where possible to make payments within 60 days of the end of the marketing month.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 72 FR 48231, Aug. 23, 2007; 73 FR 73767, Dec. 4, 2008]

§1430.209 Proof of market loss production.

(a) A dairy operation entering into a MILC must, based on instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's eligible production during the months of each fiscal year designated in the MILC. The dairy operation must also provide proof that the eligible production was commercially marketed during the months beginning October 1, 2007, and ending September 30, 2012. Evidence of milk production claimed for payment shall be provided to CCC with supporting documentation under paragraph (b) of this section. All information provided is subject to verification, spot check and audit by FSA. Further verification information may be obtained from the dairy operation's milk handler or marketing cooperative if deemed necessary by CCC to verify provided information. Refusal to allow a representative of CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility for benefits under this subpart.

(b) Eligible dairy operations marketing milk during the period specified in the MILC shall provide any available supporting documents from all producers in the dairy operation to assist CCC in verifying that the dairy operation produced and marketed milk commercially from the designated starting month and thereafter. Examples of supporting documentation include, but are not limited to: milk marketing payment stubs, tank records, milk handler records, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. Producers may also be required to allow CCC to examine the herd of cattle as production evidence. If supporting documentation requested is not presented to CCC or FSA, the request for MILC benefits will be disapproved.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 73 FR 73767, Dec. 4, 2008]

§1430.210 MILC agents.

(a) MILC benefits may be disbursed by a dairy marketing cooperative that serves special groups or communities, such as an Amish or Mennonite community. Producers in such groups in a dairy operation may authorize an agent of a dairy cooperative or milk handler affiliated with such cooperative to obtain and disburse MILC benefits to the dairy operation.

(b) The authorized MILC agent must on behalf of the dairy operation do the following:

(1) Obtain an acceptable power of attorney or acceptable equivalent for the producers of the dairy operation that

authorizes the agent to enter into an MILC contract;

(2) Enter into a written agreement with CCC for approval to act as a MILC agent on a form prescribed by CCC;

(3) Provide the dairy operation's monthly production evidence to the appropriate FSA office;

(4) Disburse payment to the dairy operation in the producer's monthly milk check or in an otherwise approved manner.

§ 1430.211 Duration of contracts.

(a) Except as provided in § 1430.205, or elsewhere in this subpart, a MILC entered into by producers in a dairy operation shall cover eligible production marketed by the producers in the dairy operation during the period beginning with the first day of the month the producers in the dairy operation enter into an MILC and ending on September 30, 2012.

(b) If a dairy goes out of business during the contract period, the MILC will be terminated immediately, except as applicable to earned payments.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 73 FR 73768, Dec. 4, 2008]

§ 1430.212 Contract modifications and statutory changes in program.

(a) Producers in a dairy operation must notify FSA immediately of any changes that may affect their MILC. Changes include, but are not limited to changes to the starting month to receive payment for the next fiscal year, death of producer on the contract, new member joining the operation, member exiting the operation, transfer of shares by sale or other transfer action, or farm reconstitutions undertaken in accordance with § 1430.213.

(b) CCC may modify an MILC if such modifications are desirable to carry out purposes of the program or to facilitate the program's administration.

(c) Payments otherwise due under this subpart or the program will be adjusted or denied to the extent provided for by a statutory change in program eligibilities or requirements of any kind irrespective of whether the program contract preceded the statutory change. Operations will be given the option of accepting the changes or terminating the contract.

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73768, Dec. 4, 2008]

§ 1430.213 Reconstitutions.

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of its operation is reconstituted in another organizational framework. However, any operation that reorganizes or restructures after October 1, 2007, is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of receiving multiple or additional MILC payments.

(b) A dairy operation that FSA determines has reorganized solely to receive additional MILC payments will be in violation of its contract and dealt 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.

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73768, Dec. 4, 2008]

§ 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.

Subpart C—Dairy Product Donation Program

SOURCE: 79 FR 51468, Aug. 29, 2014, unless otherwise noted.

§ 1430.300 Administration, purpose, and funding.

(a) The regulations in this subpart apply for the Dairy Product Donation Program (DPDP). DPDP is authorized by section 1431 of the Agricultural Act of 2014 (Pub. L. 113–79, 7 U.S.C. 9071).

(b) DPDP is designed to address low dairy producer margins, through periodic purchases of dairy products, as specified in this subpart. Dairy products purchased for DPDP will be used to provide nutritional assistance to members of low-income groups.

(c) The purchase aspect of DPDP will be operated for the Secretary of Agriculture and for the Commodity Credit Corporation by the Farm Service Agency (FSA) under the direction of the FSA's Deputy Administrator for Commodity Operations. Purchases are subject to the terms and conditions in FSA's purchase announcements. The distribution of products purchased through DPDP will be operated for the Secretary under the direction of the Food and Nutrition Service.

§ 1430.301 Definitions.

For purposes of this subpart, the following terms and acronyms apply:

2014 Farm Bill means the Agricultural Act of 2014 (Pub. L. No. 113–79).

Actual dairy production margin is as defined in subpart A of this part.

AMS means the Agricultural Marketing Service of the USDA.

CCC means the Commodity Credit Corporation.

Deputy Administrator means the Farm Service Agency Deputy Administrator for Commodity Operations.

Distribution means the provision of products purchased through DPDP to low-income groups through FNS food distribution programs in accordance with those program regulations and 7 CFR part 250.

DPDP means the Dairy Product Donation Program.

FNS means the Food and Nutrition Service of the USDA.

FSA means the Farm Service Agency of the USDA.

FSA Administrator means Administrator of the Farm Service Agency, USDA.

Hundredweight or cwt means 100 pounds.

MPP-Dairy means the Margin Protection Program for Dairy provided for in subpart A of this part.

NDM means non-fat dry milk.

Recipient agencies means agencies or organizations that are eligible to receive donated product for distribution under this subpart.

USDA means the United States Department of Agriculture.

§ 1430.302 Commencement and termination of DPDP purchases.

(a) DPDP purchases commence only if approved by the FSA Administrator under the provisions of this subpart. The FSA Administrator will approve DPDP purchases only if the actual dairy production margin has been $4 or less per cwt for each of the preceding 2 months. The actual dairy production margin will be calculated as specified in § 1430.110. The following chart shows an example of the timing for the determination of DPDP purchases.

DPDP PURCHASE DETERMINATION EXAMPLE BASED ON DAIRY PRODUCTION MARGINS AND 3-MONTH MAXIMUM FOR PURCHASES [1]

2 Consecutive months	Calculate margin for 2 consecutive months [2]	If both margins below $4 per cwt in the 2 consecutive months	3-Month maximum consideration	If either margin above $4 per cwt in the 2 consecutive months
January and February.	March	Dairy product purchases [3] begin in April.	1st month of purchases	No purchases.
February and March.	April	Dairy product purchases [3] begin in May.	2nd consecutive month of purchases.	No purchases.
March and April	May	Dairy product purchases [3] begin in June.	3rd consecutive month of purchases.	No purchases.
April and May	June [4]	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases.
May and June	July	No purchases; terminated after 3 consecutive months.	3-month maximum reached (2nd month off).	No purchases.
June and July	August	No purchases; terminated after 3 consecutive months.	3-month maximum reached (3rd month off).	No purchases.
July and August	September	Dairy product purchases [3] begin in October.	1st month of purchases	No purchases.
August and September.	October	Dairy product purchases [3] begin in November.	2nd consecutive month of purchases.	No purchases.
September and October.	November	Dairy product purchases [3] begin in December.	3rd consecutive month of purchases.	No purchases.

DPDP PURCHASE DETERMINATION EXAMPLE BASED ON DAIRY PRODUCTION MARGINS AND 3-MONTH MAXIMUM FOR PURCHASES [1]—Continued

2 Consecutive months	Calculate margin for 2 consecutive months [2]	If both margins below $4 per cwt in the 2 consecutive months	3-Month maximum consideration	If either margin above $4 per cwt in the 2 consecutive months
October and November.	December	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases.
November and December.	January	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases

[1] This example assumes that purchases begin in January. In reality, DPDP can—depending on prices and margin triggers—begin on September 1, 2014, which is the start of MPP-Dairy.
[2] The full month data for a given month is available at the end of the following month. For example, January data are not available until the end of February.
[2] Purchases cannot begin unless domestic cheddar cheese or nonfat dry milk prices are at certain differentials relative to world prices.
[3] In the example, June is the 3rd month of consevutive purchases. June would not be calculated as a potential trigger month, but it is shown on the chart to clearly show the concept of 3 months on and 3 months off for purchases. If purchases are taking place during a month, that month cannot be used as a trigger month for a future purchase period.

(b) DPDP purchases terminate and are not reinstated until the condition specified in paragraph (a) of this section is again met, whenever any one of the following occurs:

(1) If purchases were made for the preceding 3 months, even if the actual dairy production margin remains $4 or less per cwt of milk.

(2) If the actual dairy production margin has been greater than $4 per cwt of milk for the immediately preceding month.

(3) If the actual dairy production margin has been $4 or less, but more than $3, per cwt for the immediately preceding month and during the same month —

(i) The price in the United States for cheddar cheese was more than 5 percent above the world price, or

(ii) The price in the United States for non-fat dry milk (NDM) was more than 5 percent above the world price of skim milk powder.

(4) If the actual dairy production margin has been $3 or less per cwt of milk for the immediately preceding month and during the same month —

(i) The price in the United States for cheddar cheese was more than 7 percent above the world price; or

(ii) The price in the United States for NDM was more than 7 percent above the world price of skim milk powder.

(c) Purchases will terminate beginning with the first day of any month that does not qualify for DPDP purchases.

(d) For calculations under paragraphs (b)(3) and (4) of this section, the FSA Administrator may use data from a single or multiple locales or markets, including weighted averages, in consultation with AMS or other USDA agencies.

§ 1430.303 DPDP purchases.

(a) DPDP purchases will be made only for those months that the FSA Administrator has determined meet all the requirements specified in § 1430.302. The purchases are subject to DPDP requirements including price and quantity restrictions specified in this subpart.

(b) The Secretary has the authority to determine purchase and distribution methods for dairy product purchases and distribution. Unless otherwise determined by the Secretary, this authority is delegated to the Deputy Administrator in consultation with FNS.

(c) FSA and FNS will determine the types and quantities of products that will be purchased, in consultation with public or private nonprofit organizations and State and local agencies eligible to receive such products.

(d) The FSA Administrator will determine the quantity of purchases to be made for a qualifying month and will consider the results of any consultations in determining the quantity to be purchased. In making the determination, the FSA Administrator will also take into account a number of factors, including, but not limited to, dairy product market conditions,

logistical considerations involved in the efficient and immediate distribution of the dairy products, the potential effect on markets and margins, time constraints of DPDP, and the cost effectiveness of the purchases. Approved quantities for a month will not exceed the amount of product that may be effectively distributed without waste.

(e) Purchases may be approved for a qualifying month to the extent that the purchase by FSA can reasonably be expected to be completed in that calendar month and the products delivered to recipient agencies within 90 days.

(f) DPDP purchases cannot be stored by or for CCC, and CCC cannot incur storage costs on behalf of recipient agencies for the dairy products.

(g) The purchase price of products will be the prevailing market price for like dairy products for private buyers as determined by the Deputy Administrator. That price may be, if approved by the Deputy Administrator, the price determined by the normal procurement methods used to procure foods for FNS domestic food assistance programs, if the dairy products are obtained that way.

§ 1430.304 Distribution of DPDP purchased products.

(a) Purchased products will be distributed to private and public nonprofit organizations eligible to receive donated foods for distribution to low-income groups through FNS' food distribution programs as specified in FNS program regulations and the requirements in 7 CFR part 250.

(b) Public and private nonprofit organizations receiving donated dairy products under this section will be responsible for the proper handling and distribution of such products in accordance with FNS program regulations, 7 CFR part 250, and FNS guidance and instructions.

(c) A private or nonprofit organization agency receiving donated products under this section which improperly distributes or uses such product or causes loss of or damage to such product, will be subject to recovery of losses or other corrective action in accordance with FNS program regulations, 7 CFR part 250.

Subpart D—Dairy Margin Coverage Program

SOURCE: 84 FR 28176, June 18, 2019, unless otherwise noted.

§ 1430.400 Purpose.

The regulations in this subpart apply to the Dairy Margin Coverage (DMC) Program that replaces the Margin Protection Program for Dairy (MPP-Dairy) in subpart A. The purpose of DMC is to provide eligible dairy producers risk protection against low margins resulting from a combination of low milk prices and high feed costs.

§ 1430.401 Administration.

(a) The DMC Program is administered by the Farm Service Agency (FSA) under the general supervision of the Executive Vice President, CCC, or a designee, and will be carried out by FSA State and county committees and employees.

(b) FSA 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 will 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 non-statutory program deadlines when failure to meet such deadline does not adversely affect the operation of the DMC Program.

(f) A representative of CCC may execute a contract for participation in the DMC Program and related documents under the terms and conditions determined and announced by the Deputy Administrator on behalf of CCC. Any document not under such terms and conditions, including any purported

execution before the date authorized by CCC, will be null and void.

§ 1430.402 Definitions.

The definitions in this section apply for all purposes of administering the DMC Program.

Actual dairy production margin means the difference between the all-milk price and the average feed cost, as calculated under § 1430.411. If the calculation would produce a negative number, the margin is considered to be zero.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

All-milk price means the national average price received, per hundredweight of milk, by dairy operations for all milk sold to dairy plants and milk dealers in the United States, as determined by the Secretary.

AMS means the Agricultural Marketing Service of USDA.

Annual election period for DMC means the period, each calendar year, established by the Deputy Administrator, for a dairy operation to register to participate in DMC for the following coverage year, pay associated administrative fees, and make coverage elections for an applicable calendar year.

Average feed cost means the national average cost of feed used by a dairy operation to produce a hundredweight of milk, as determined under the provisions of this subpart.

Beginning farmer or rancher means an individual or entity who has both not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years; and materially and substantially participates in the operation of the farm or ranch. For legal entities to be considered a beginning farmer or rancher, all members must be related by blood or marriage; and all the members must be beginning farmers or ranchers.

Buy up coverage means dairy margin coverage for a margin protection level above $4 per hundredweight of milk.

Calendar year means the year beginning with January 1 and ending the following December 31.

Catastrophic level coverage means $4 per cwt margin protection coverage and a coverage percentage of 95 percent, with no premium assessed.

CCC means the Commodity Credit Corporation of USDA.

Commercially marketed means selling whole milk to either the market to which the dairy operation normally delivers or other similar markets and receives monetary compensation.

Contract means the terms and conditions to participate in the DMC Program as executed on a form prescribed by CCC and required to be completed by the producers in the dairy operation and accepted by CCC, including any contract modifications made in an annual election period before coverage for the applicable calendar year commences.

Covered production history is equal to the production history of the operation multiplied by the coverage percentage selected by the participating dairy operation.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a state.

Dairy margin coverage (or DMC) means the dairy margin coverage program for dairy producers established under this subpart.

Dairy margin coverage payment (DMC payment) means a payment made to a participating dairy operation under the DMC Program under the terms of this subpart.

Dairy operation means, as determined by the Deputy Administrator, and subject to conditions that the Deputy Administrator may impose to advance the achievement of the purposes of the DMC Program, any one or more dairy producers that produce and market milk commercially produced from cows as a single unit in which each dairy producer:

(1) Shares in the pooling of resources under a common ownership structure;

(2) Is at risk in the production of milk in the dairy operation;

(3) Contributes land, labor, management, equipment, or capital to the dairy operation that are at least commensurate to the producer's share in the operation; and

(4) Has production facilities located in the United States.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, or designee.

Farm Service Agency or FSA means the Farm Service Agency of USDA.

Handler or producer handler means the initial individual or entity making payment to a dairy operation for milk produced in the United States and marketed for commercial use.

Hundredweight or *cwt* means 100 pounds.

Limited resource farmer or rancher means a farmer or rancher that is a person with both:

(1) Direct or indirect gross farm sales not more than an amount determined by FSA in each of the previous 2 years; and

(2) A total household income at or below the national poverty level for a family of four or less than 50 percent of county median household income in each of the previous 2 years.

Milk Income Loss Contract Program or *MILC* means the program established under section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) and the regulations in part 1430, subpart B of this part.

Milk marketing means a sale of milk for which there is a verifiable production record for milk commercially marketed.

NASS means the National Agricultural Statistics Service of USDA.

New operation means a dairy operation that:

(1) Did not establish a production history under the MPP-Dairy;

(2) Has less than 12 full months in a calendar year of commercial milk marketings produced by the dairy operation; and

(3) Started commercially marketing milk within 60 days of submitting a contract application under DMC.

Open enrollment period for DMC means the period, each calendar year, established by the Deputy Administrator, for a participating dairy operation to either register to participate in the DMC Program, pay associated administrative fees, if applicable, and applicable premiums, or to make annual coverage elections for an applicable calendar year of participation.

Participating dairy operation means a dairy operation that signs up to participate in the DMC Program under this part.

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:

(1) Shares in the risk of producing milk, and

(2) Makes contributions including land, labor, management, equipment, or capital:

(i) To the dairy operation at least commensurate to the producer's share of the operation, or

(ii) To the dairy operation of the individual or entity, as determined by the Deputy Administrator.

Production history means the production history determined for a participating dairy operation under this subpart when the participating dairy operation first registers to participate in DMC or previously established under MPP-Dairy, as determined under the provisions of this subpart.

RMA means the Risk Management Agency of USDA.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Groups include: American Indians or Alaskan Natives, Asians or Asian Americans, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women. For legal entities requesting to be considered Socially Disadvantaged, the majority interest must be held by socially disadvantaged individuals.

Supplemental Dairy Margin Coverage payment means a payment made to a participating dairy operation under the DMC Program under the terms of this subpart.

Supplemental production history means the production history determined for a participating dairy operation under

this subpart when the participating dairy operation registers to participate in DMC through special enrollment or annual coverage election period.

United States means, unless the context suggests otherwise, the 50 States of the United States of America, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

USDA means the U.S. Department of Agriculture.

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.

Veteran farmer or rancher means a person who has served in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, and who has not operated a farm or ranch; has operated a farm or ranch but not for more than 10 years total, since becoming a veteran; or has obtained status as a veteran during the most recent 10-year period. A legal entity or joint operation will be considered a veteran farmer or rancher entity, if all members meet this definition.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021]

§ 1430.403 Eligible dairy operations.

(a) In order for a dairy operation to be eligible to register for DMC and receive payments, such dairy operation must:

(1) Produce milk from cows in the United States that is marketed commercially at the time of each annual election for an applicable coverage year in DMC, except that dairy operations that have stopped producing and marketing milk in any month before or during the annual coverage election period for 2019 are eligible for only those applicable months;

(2) Submit accurate and complete information as required by this subpart;

(3) Provide proof of milk production marketed commercially by all persons in the dairy operation to establish production history;

(4) Pay required administrative fees for participation in DMC as specified in this subpart and any premiums, if applicable, as specified in this subpart.

(b) A person or entity covered by §1400.401 of this chapter (hereafter ''foreign person'') must meet the eligibility requirements in that section to receive payments under this subpart. A dairy operation with ineligible foreign persons as members will have any payment reduced by the proportional share of such members.

(c) Federal agencies and States, including all agencies and political subdivisions of a State, are not eligible for payments under this subpart.

(d) A single dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in DMC and can only submit one application. If a producer owns more than one eligible dairy operation in which each operation is separate and distinct from each other, such dairy producer may be eligible to participate separately for each dairy operation, however, each eligible dairy operation must be separately registered, as specified in §1430.404.

(e) The Deputy Administrator or designee will determine additional dairy operations that operate in a manner that are separate and distinct from each other according to paragraph (d) of this section and which may, as determined by the Deputy Administrator, be considered an operation even though they may not meet the conditions otherwise imposed in this definition. Also, the Deputy Administrator may require operations to be combined and considered one operation when there is close interest by family or otherwise between two operations, to avoid schemes or devices, or otherwise. Likewise, the Deputy Administrator may consider other factors as are deemed appropriate to adjust what is considered a dairy operation to conform with the DMC Program requirements in an equitable manner, including taking into account a dairy's status under MPP-Dairy and the Milk Income Loss Contract Program formerly operated under this part.

(f) Dairy operation eligibility for supplemental production history requires

the dairy operation to be enrolled in DMC for the applicable calendar year. Dairy operations with less than 5 million pounds of DMC production history are eligible for supplemental production history.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021]

§ 1430.404 Time and method of registration and annual election.

(a) A dairy operation may register to participate in DMC by establishing a production history and, if eligible, supplemental production history, according to § 1430.405 on a form prescribed by CCC and also submitting a contract prescribed by CCC. Dairy operations may obtain a contract in person, by mail, or by facsimile from any FSA county office. In addition, dairy operations may download a copy of the forms at *https://www.sc.egov.usda.gov*.

(b) A dairy operation must submit completed contracts and any other supporting documentation, during the annual election period established by the Deputy Administrator, to the administrative county FSA office serving the dairy operation. However, the production history must be established only once and approved by CCC before the contract is submitted and considered complete.

(1) A new dairy operation that has been established after the most recent election period is required to submit a contract within the first 60 calendar days from the date of which the dairy operation first commercially markets milk and may elect coverage that begins the month and day the dairy operation has commercial marketings.

(2) A new dairy operation that does not meet the 60-day requirement of paragraph (b)(1) of this section cannot enroll until the next annual election period for coverage for the following calendar year.

(3) Dairy operations enrolling supplemental production must establish supplemental production history and apply for supplemental coverage during a special enrollment or coverage election period specified by the Deputy Administrator. Once supplemental production history is established, that history will be permanent and will include previously established production history and subject to coverage elections made by the dairy operation under the lock-in option according to § 1430.407(j) or made by the dairy operation in subsequent annual coverage year enrollments.

(c) Annual contracts with coverage elections are to be submitted in time to be received at FSA by the close of business on the last day of the annual election period, established by the Deputy Administrator.

(1) The applicable year of coverage for contracts received during an annual election period will be the following calendar year, except for 2019, where the election and coverage year will be the same, or unless otherwise specified by the Deputy Administrator for Farm Programs. Coverage for dairy operations that register during the 2019 election period will be retroactive to January 1, 2019.

(2) Annual contracts with coverage elections submitted after the applicable allowed time for submission will not be considered.

(d) If the dairy producer operates more than one separate and distinct operation, the producer must register each operation for each operation to be eligible for coverage. If the producer moves the same herd of cattle between two facilities, then the two facilities will not be regarded as separate and distinct but as one operation unless the Deputy Administrator determines otherwise. A separate operation must distinctly, as a single unit, have their own cattle, facilities, milk marketings, tanks, feed, records, State level licenses, and permits. All new dairy operations that did not participate in MPP-Dairy must meet all the requirements of this paragraph. A participating dairy operation in business prior to January 1, 2019, that participated in MPP-Dairy will automatically be determined as a ''dairy operation'' for DMC Program purposes in the same manner as under MPP-Dairy. In disputes regarding separate dairy operations the Deputy Administrator will determine what is a separate and distinct operation and that decision will be final. A dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in DMC and

may only, submit one contract. Only participating dairy operations enrolling using contract forms approved by CCC will be covered by the DMC Program.

(e) A participating dairy operation must elect, during the applicable annual election period and by using the form prescribed by CCC, the coverage level threshold and coverage percentage for that participating dairy operation for the applicable calendar year:

(1) Once the registration for a calendar year of coverage is submitted and approved by CCC, coverage for subsequent years does not automatically carry forward. For each calendar year, a dairy operation that decides to participate in DMC must register for a calendar year of coverage according to this paragraph (e) during the applicable coverage election period, except as described in paragraph (e)(2) of this section;

(2) During the 2019 annual coverage election period only, participating dairy operations that make a one-time election of coverage level and percentage of coverage, according to §1430.407(j), will be locked in at the same coverage level and percentage of coverage for a 5-year period beginning January 1, 2019, and ending December 31, 2023. Dairy operations that elect the lock-in option are required to pay the annual administrative fee and submit an annual contract during the annual contract election period for each coverage year to certify that the dairy operation is still in the business of producing and commercially marketing milk. If the operation fails to pay the applicable administrative fees or certify the status of the dairy operation, the dairy operation will remain obligated for all applicable unpaid administrative and premium fees calculated for that 5-year period.

(3) All participating producers in the participating dairy operation must agree to the coverage level threshold and coverage percentage elected by the operation on the contract. Producers in the participating dairy operation that elect not to participate may not submit a separate contract for coverage. All producers that share in risk of the dairy operations production must be indicated on the contract with their corresponding share in the dairy operation, however, a signature from the non-participating member will not be required for CCC approval.

(4) During the 2021 special enrollment period only, for participating dairy operations that had a succession-in-interest occur from January 2, 2021, through the opening of special enrollment, for supplemental production history to be applicable to such successors, the predecessor must first establish supplemental production history. For successions-in-interest when the successor establishes supplemental production history before the predecessor, the successor's supplemental production history will be applicable for 2022.

(f) By registering to participate or receive payment under DMC, all participating producers in the dairy operation must certify to the accuracy and truthfulness of the information in their applications and supporting documentation.

(1) All participating producers who share in the risk of a dairy operation's production must sign and certify all submissions made under DMC that relate to the level of coverage and marketed production for the dairy operation.

(2) All information provided is subject to verification by FSA. FSA may require a dairy operation to provide documentation that supports all verifiable records. Furnishing the information is voluntary; however, without such information DMC Program benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines, and other penalties or sanctions.

(g) At the time the completed contract is submitted to FSA for the first program year in which the operation is to participate in DMC, the dairy operation must also submit a separate form, as prescribed by CCC, to establish the production history for the dairy operation. An established production history and a completed contract are both required to have a complete submission that is subject to approval by FSA. Production histories established for dairy operations under MPP-Dairy will be used in the DMC Program. A new production history will

only be established for new dairy operations that did not participate in MPP-Dairy.

(h) In addition to meeting requirements in paragraph (g) of this section, the dairy operation must submit a separate form as prescribed by CCC to establish the supplemental production history for the dairy operation. A supplemental production history and a completed contract are both required for a complete submission that is then subject to approval by FSA.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021]

§ 1430.405 Establishment and transfer of production history for a participating dairy operation.

(a) Except as provided in paragraphs (b) and (c) of this section, FSA will establish the production history for a dairy operation for DMC as the highest annual milk marketings of the participating dairy operation during any one of the 2011, 2012, or 2013 calendar years.

(1) Producers in the participating dairy operation are required to provide adequate proof of the dairy operation's quantity of milk commercially marketed, to establish the production history and supplemental history for the dairy operation.

(2) All information provided is subject to verification, spot check, and audit by FSA. If the dairy operation does not provide, to the satisfaction of FSA, documentation requested to substantiate the production history of the highest annual milk marketings or 2019 milk marketings for the participating dairy operation, then the registration will not be approved.

(3) A participating dairy operation may establish supplemental production history during the coverage election period preceding the coverage year, except for 2021 when a special enrollment will occur. To determine supplemental production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent.

(b) A participating dairy operation that was not in operation prior to January 1, 2014, that has not established a production history will elect the highest annual milk marketings during any one calendar year while in operation to determine the production history of the participating dairy operation.

(c) A participating dairy operation with less than one year of production history will be considered a new dairy operation. To establish the production history for such a new dairy operation the new dairy operation is required to elect one of the following methods:

(1) The volume of the actual milk marketings for the months the dairy operation has been in operation, extrapolated to a yearly amount based on a national seasonally adjusted index, as determined by the Deputy Administrator, to account for differences in milk production during the year; or

(2) An estimate of the actual milk marketings of the dairy operation based on the herd size of the dairy operation relative to the national rolling herd average data published by the Secretary.

(d) If FSA determines that the new enterprise was formed for the purpose of circumventing DMC provisions, including, but not limited to, reconstituting a dairy operation to receive additional benefits, or establishing new production history, that enterprise will not be considered a new dairy operation for the purpose of establishing production history.

(e) Once the production history of a participating dairy operation is established under paragraph (a), (b), or (c) of this section, the production history will be adjusted by a one-time upward adjustment by FSA to reflect any increase in the national average milk production relative to calendar year 2017, as determined by the Deputy Administrator. Dairy operations participating in DMC, that had production history previously established under MPP-Dairy but elected not to participate in MPP-Dairy are not eligible for the production history adjustment. Dairy operations with approved contracts for 2018 coverage under MPP-Dairy will maintain that same production history, as in the DMC Program and are not eligible for the production history adjustment. New dairy operations that participate in DMC, that

did not previously have their production history established nor participate in MPP-Dairy, will have the same adjustment factor of 1.0186 applied to their established production history for registration in the DMC Program as 2018 MPP-Dairy participants. There will be no further adjustments in subsequent years of participation made to the established production history under the DMC Program.

(f) The production history and supplemental history must be transferred from one dairy facility to another as follows:

(1) Producers of a dairy operation relocate the dairy operation to another location and the production history and supplemental history, if applicable, of the original operation must be transferred to the new location and subject to the same elected coverage levels for that year; or

(2) Producers of a dairy operation transfer ownership of a dairy operation with its associated production history and supplemental history, if applicable, through a succession-in-interest transfer when there is a spouse, child, heir, or common member that the dairy operation is being transferred to and there is no break in the continuity of the dairy operation. However, the successor operation must submit a separate registration according to §1430.404, to participate in DMC, but will be subject to the same elected coverage levels made by the predecessor for that coverage year or lock-in period, as applicable.

(g) If CCC waives the obligation, under DMC of a participating dairy operation due to death or retirement of the producer or of the permanent dissolution of the dairy operation or under other circumstances as determined by the Deputy Administrator, FSA may reestablish the production history and supplemental history, if applicable.

(h) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 5 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes effect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring in 2019 before the 2019 annual coverage election period, the dairy operation must notify FSA during the registration and annual coverage election period for coverage year 2019, established by the Deputy Administrator. The operation has the option of the additional production history taking effect beginning with the month the producer first began to commercially produce and market milk as part of the dairy operation, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in §1430.407(h)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

(2) All of the items specified in this paragraph must be documented in the notification to FSA and self-certified by the current and new member(s) for the intergenerational transfer to be considered eligible for additional production history. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

(i) Documentation that the new member(s) joining the operation has purchased the dairy cows being added to the dairy operation;

(ii) Certification that each new member will have a share of the profits or losses from the dairy operation commensurate with such person's contributions to the dairy operation;

(iii) Certification that each new member has a significant equity ownership in the participating dairy operation at levels determined by the Deputy Administrator and announced on the FSA website, *www.fsa.usda.gov;*

(iv) Certification that each new member is a lineal descendant or spouse of a current member of the participating dairy operation;

(v) Agreement that each new member will contribute labor in the dairy operation at a minimum of 35 hours per week or have a plan for transition to full-time, subject to FSA county committee review and approval, if only working seasonally or part-time;

(vi) Certification that the dairy operation will be the principal source of non-investment earned income for each new member; and

(vii) Documentation of the participating dairy operation's current annual marketings as of the date of the intergenerational transfer.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021]

§ 1430.406 Administrative fees.

(a) Except as provided in paragraph (e) of this section, dairy operations must pay an administrative fee to CCC in the amount of $100 at the time of enrollment during the annual election period for each applicable coverage year the dairy operation decides to participate in DMC. Annual administrative fees are due and payable to CCC through the administrative county FSA office no later than the close of business on the last day of the annual election period established by the Deputy Administrator for each applicable calendar year of dairy margin coverage under DMC. The administrative fee paid is non-refundable.

(b) The required annual administrative fee is per dairy operation. Therefore, multiple dairy producers in a single participating dairy operation are required to pay only one annual administrative fee for the participating dairy operation. Conversely, in the case of a dairy producer that operates more than one dairy operation, each participating dairy operation is required to pay a separate administrative fee annually.

(c) Dairy operations that lock-in coverage according to § 1430.407(j), are required to pay the administrative fee each year through 2023, except as provided in paragraph (e) in this section.

(d) Failure to pay the administrative fee timely will result in loss of dairy margin coverage for the applicable calendar year.

(e) A limited resource, beginning, veteran, or socially disadvantaged farmer or rancher, as defined in § 1430.402, will be exempt from paying the administrative fee in this section. The administrative fee waiver for the DMC Program for socially disadvantaged, beginning, and limited resource farmers and ranchers must be requested on a form specified by FSA and must accompany the contract application for coverage under this part in the administrative county FSA office.

§ 1430.407 Buy-up coverage.

(a) For purposes of receiving buy-up dairy margin coverage, a participating dairy operation may annually elect, except as provided by paragraph (i) of this section, during an annual election period the following for the succeeding calendar year:

(1) A coverage level threshold for margins that, per cwt, is equal to one of the following: $4.50, $5, $5.50, $6, $6.50, $7, $7.50, $8, $8.50. $9, or $9.50; and

(2) A percentage of coverage for the production history and supplemental history from 5 percent to 95 percent, in 5 percent increments.

(b) In the absence of any such election, the applicable coverage level provided, with no premium due, is catastrophic level coverage.

(c) A participating dairy operation that elects margin protection coverage above $4 is required to pay an annual premium based on coverage level and covered production history in addition to the administrative fee. Tier 1 applies to covered production history up to and including 5 million pounds; Tier

2 applies to covered production history above 5 million pounds.

(d) A participating dairy operation may only select one coverage level threshold and only one percentage of coverage applicable to both Tier 1 and Tier 2. However, a participating dairy operation that elects a coverage level threshold of $8.50, $9, or $9.50, according to paragraph (a)(1) of this section, on the dairy operation's first 5 million pounds of production history under Tier 1, must choose a different coverage level threshold that is equal to $4, $4.50, $5, $5.50, $6, $6.50, $7, $7.50, $8 to apply to production history in excess of 5 million pounds included in the covered production under Tier 2 elected by the participating dairy operation.

(e) The premium per cwt of milk, based on the elected percentage of coverage of production history is specified in the following table:

TABLE 1 TO § 1430.407(e)

Coverage level (margin)	Tier 1 premium per cwt (for the covered production history that is 5 million pounds or less)	Tier 2 premium per cwt (for the part of covered production history over 5 million pounds)
$4.00	None	None
4.50	$0.0025	$0.0025
$5.00	0.005	0.005
$5.50	0.030	0.100
6.00	0.050	0.310
6.50	0.070	0.650
7.00	0.080	1.107
7.50	0.090	1.413
8.00	0.100	1.813
8.50	0.105	N/A
9.00	0.110	N/A
9.50	0.150	N/A

(f) The annual premium due for a participating dairy operation is calculated:

(1) For production history, by multiplying:

(i) The covered production history; and

(ii) The premium per cwt of milk specified in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation; and

(2) For supplemental production history, by multiplying:

(i) The covered supplemental production history; and

(ii) The premium per cwt of milk in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation.

(g) In the case of a new dairy operation that first registers to participate in DMC for a calendar year after the start of the calendar year, the participating dairy operation is required to pay a pro-rated premium for that calendar year based on the portion of the calendar year for which the participating dairy operation is eligible, and for which it purchases the coverage.

(h) A participating dairy operation is required to pay the annual premium in total as specified in paragraphs (d) and (e) of this section for the applicable calendar year, at time of submission of coverage election to FSA; but no later than September 1 of the applicable calendar year of coverage, unless otherwise specified by the Deputy Administrator.

(i) If the total premium is not paid for an applicable calendar year of coverage as specified in paragraph (g) of this section, the participating dairy operation will lose coverage until such time as the premium has been fully paid.

(j) For each calendar year 2019 through 2023, a participating dairy operation that makes a one time election of a coverage level threshold and a percentage of coverage according to this section, for a 5-year period, will have their elected coverage level, as applicable to each tier, reduced by 25 percent. The option to lock in for the premium rate discount must be elected during the 2019 annual coverage election period announced by FSA. Except that, new dairy operations, not in existence during the 2019 annual election period, that elect to participate in DMC according to § 1430.404(b), are eligible to receive the premium rate discount for locking coverage for the period beginning with the first available calendar year and ending in 2023, except that new dairy operations registering for DMC for the first time for coverage year 2023 and dairy operations that stop producing and marketing milk in 2019 that are registering for eligible months in 2019 are not eligible for the multi-year premium discount. All dairy operations that elect the lock-in

option are subject to full participation in the DMC Program at the same elected premium coverage levels and calculated premium for the duration of DMC according to § 1430.413.

(k) Annual premium balances due to CCC from a participating dairy operation for a calendar year of coverage must be paid in full no later than September 1 of the applicable calendar year or within a grace period determined by the Deputy Administrator, if applicable.

(l) The Deputy Administrator may waive the obligation to pay the premium, or refund the premium paid, of a participating dairy operation for a calendar year, for death, retirement, permanent dissolution of a participating dairy operation, or other circumstances determined by the Deputy Administrator. In these instances, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

(m) DMC administrative fees and premiums are required to be paid by a negotiable instrument satisfactory to FSA and made payable to CCC and either mailed to or provided in person to the administrative county office or other location designated by FSA.

(n) The premium rate for supplemental pounds eligible under a multiyear lock in contract maintains the basic rate according to paragraph (e) of this section and will not receive the 25 percent premium discount rate.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021]

§ 1430.408 MPP-Dairy premium repayments.

(a) A dairy operation that participated in MPP-Dairy during any of calendar years 2014 through 2017 may receive a repayment in an amount equal to the difference between the total amount of premiums paid by the dairy operation for each applicable calendar year of coverage and the total amount of payments made to the MPP-Dairy participating dairy operation for that applicable calendar year.

(b) FSA will determine the calculated repayment amounts for each year for each dairy operation that participated in MPP-Dairy during the years of 2014 through 2017.

(1) Coverage years in which the payments exceeded premiums paid for that coverage year will yield a $0 calculation for that calendar year.

(2) Dairy operations must provide adequate proof, to the satisfaction of FSA, for calculated repayment amounts in dispute.

(c) Qualifying dairy operations according to paragraph (a) of this section, must elect on a form prescribed by CCC, to receive the repayment in either an amount that is equal to the following:

(1) 75 percent of the calculated repayment as a credit that may be used by the dairy operation towards DMC premiums; or

(2) 50 percent of the calculated repayment as a direct cash repayment.

(d) Dairy operations may transfer their premium repayment election choice in paragraph (c) of this section to a dairy operation that succeeded to the dairy operation through a succession-in-interest transfer under MPP-Dairy. However, the dairy operation to which the election choice is being transferred to must be participating in the DMC Program if the credit option is elected according to paragraph (c)(1) of this section. Otherwise, their credit repayment election is not transferrable. Dairy operations that give up their right to elect a premium repayment option by designation of such on a form prescribed by CCC are not eligible to receive a cash or credit benefit, in full or partially, for premiums paid under MPP-Dairy.

(e) A dairy operation that elects the credit option can only use the credit in the DMC Program. If the entire credit is not used, for any reason, it cannot be applied as a credit to any other USDA program and will have zero cash value that cannot be redeemed for any purpose.

(f) A dairy operation that elects the cash repayment option will have the repayment issued only in the name of the dairy operation entity as it existed in MPP-Dairy.

(g) A dairy operation must choose their MPP-Dairy premium repayment option on a form prescribed by CCC during a period specified by FSA. Once

the premium repayment choice of credit or cash is made by the dairy operation and approved by FSA, that choice cannot be changed.

§ 1430.409 Dairy margin coverage payments.

(a) A DMC payment will be made to a participating dairy operation for any month when the average actual dairy production margin for that month falls below the coverage level threshold in effect for the participating dairy operation.

(b) Payments trigger at the catastrophic level or at the buy-up level; the payments will be calculated according to this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 95 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 95 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment—first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 95 percent; the result of these two calculations will be added together to determine the payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history divided by 12 as follows:

(1) *Payment rate.* The amount by which the coverage level exceeds the average actual dairy production margin for a month;

(2) *Coverage percentage.* The coverage percentage;

(3) *Production history.* The production history of the dairy operation, divided by 12; and

(4) *Supplemental history.* The supplemental production history of the dairy operation, divided by 12.

(c) If the dairy operation purchased buy-up level coverage at less than 95 percent of production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 95 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 45 percent for total coverage of 95 percent.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70708, Dec. 13, 2021]

§ 1430.410 Effect of failure to pay administrative fees or premiums.

(a) A participating dairy operation that fails to pay a required administrative fee or premium payment due upon application to DMC or for a calendar year of coverage:

(1) Remains legally obligated to pay such administrative fee or premium, as applicable; and

(2) Upon such failure to pay when due, loses coverage under DMC until such administrative fee or premium is paid in full, and once paid, coverage will be reinstated beginning with the month coverage was lost.

(b) CCC may take such actions as necessary to collect unpaid administrative fees and premium payments.

§ 1430.411 Calculation of average feed cost and actual dairy production margins.

(a) Payments are made to a participating dairy operation as specified in this subpart only when the calculated average actual dairy production margin for a month is below the coverage level in effect for the participating dairy operation. That margin will be calculated on a national basis and is the amount by which for the relevant month, the all milk price exceeds the average feed cost for dairy producers. The average actual dairy production margin calculation applies to all participating dairy operations. The calculations are not made on an operation by operation basis or on their marketings.

(b) For calculating the national average feed cost that dairy operations use to produce a cwt of milk, the following three items will be added together:

(1) The product determined by multiplying 1.0728 by the price of corn per bushel;

(2) The product determined by multiplying 0.00735 by the price of soybean meal per ton; and

(3) The product determined by multiplying 0.0137 by the price of alfalfa hay per ton.

(c) To make those feed calculations, the Deputy Administrator on behalf of CCC will use the following full month data:

(1) For corn, the full month price received by farmers during the month in the United States as reported in the monthly Agricultural Prices report by USDA NASS;

(2) For soybean meal, the Central Illinois soybean meal price delivered by rail as reported in the USDA AMS Market News-Monthly; and

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for high quality (premium and supreme) alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS will be used to calculate the hay price.

(d) The national average feed cost data for corn, soybean meal, and alfalfa hay used in the calculation of the national average feed cost to determine the actual dairy production margin for the relevant period, will be the data reported in the publication the following month. (For example, full month May prices will be available in the June publication, and those will be the prices used).

(e) The actual dairy production margin for each month, will be calculated by subtracting:

(1) The average feed cost for that month, determined under paragraph (b) of this section; from

(2) The all-milk price for that same month.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70708, Dec. 13, 2021]

§ 1430.412 Relation to RMA's LGM-Dairy Program.

(a) Dairy producers that produced and commercially marketed milk in 2018 and participated in the LGM-Dairy Program operated by RMA in 2018 are eligible to receive retroactive 2018 coverage under MPP-Dairy for those months in operation. Approved participation for retroactive MPP-Dairy coverage is subject to verification of LGM-Dairy coverage in 2018 by RMA.

(b) Eligible dairy producers must apply for the retroactive 2018 MPP-Dairy coverage on a CCC-prescribed application form during a signup period announced by the Deputy Administrator.

(c) Eligible producers that received partial year benefits under MPP-Dairy are eligible for the full year, less any payments issued for a month that triggered a payment under MPP-Dairy in 2018.

§ 1430.413 Multi-year contract for lock-in option.

(a) Participating dairy operations enrolled in DMC according to §1430.407(j) are registered through December 31, 2023. As such, a participating dairy operation is obligated to pay applicable administrative fees and applicable premiums each succeeding calendar year following the date the contract is first entered into through December 31, 2023. Likewise, any successor to the dairy operation with lock-in coverage will be bound to the same coverage elections made by the predecessor and applicable premiums for the duration of the lock-in period.

(b) A participating dairy operation under a lock-in option that fails to pay applicable administrative fees and premiums for each year of the lock-in will remain obligated to pay such applicable administrative fees and premiums as specified in §1430.410.

(c) If a participating dairy operation goes out of business as described in §1430.407(l) before December 31, 2023, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

§ 1430.414 Contract modifications.

(a) Producers in a participating dairy operation must notify FSA immediately of any changes that may affect their participation in DMC. Changes include, but are not limited to, death of a producer who is on the contract, producer joining the operation, producer exiting the operation, relocation of the dairy operation, transfer of shares by sale or other transfer action, or dairy operation reconstitutions as provided in §1430.415.

(b) Payment of any outstanding premium or administrative fee for a participating dairy operation must be paid in full before a transfer of shares by sale or any other change in producers on the contract originally submitted to FSA may take effect. Otherwise, producer changes will not be recognized until the following annual election period, and only if at that time all associated premiums and administrative fees from any previous calendar year of coverage have been paid in full.

§ 1430.415 Reconstitutions.

(a) Any participating dairy operation that reorganizes or restructures after enrollment is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of establishing an alternative production history for a participating dairy operation or was reorganized or restructured to otherwise circumvent any DMC Program provision under this subpart (including the tier system for premiums) or otherwise to prevent the accomplishment of the purpose of the DMC Program.

(b) A participating dairy operation that FSA determines has reorganized solely to establish a new production history or to circumvent the determination of applicable fees or premiums based on an established production history determined under this subpart will be considered to have failed to meet the DMC Program requirements and, in addition to other sanctions or penalties that may apply, will not be eligible for DMC payments.

(c) Under no circumstance, except as approved by the Deputy Administrator or provided for in these regulations, will the reconstitution or restructure of a participating dairy operation change the determined production history for the operation. The Deputy Administrator may, however, adjust the production history of a participating dairy operation if there is a calculation error or if erroneous information has been supplied by or on behalf of the participating dairy operation.

§ 1430.416 Offsets and withholdings.

FSA may offset or withhold any amount due to FSA or CCC under this subpart under the provisions of part 1403 of this chapter or any successor regulations, or any other authorities that may allow for collection action of that sort.

§ 1430.417 Assignments.

Any producer may assign a payment to be made under this subpart in accordance with part 1404 of this chapter or successor regulations as designated by the Secretary or as allowed by the Deputy Administrator in writing.

§ 1430.418 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.

§ 1430.419 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, all or any part of a payment otherwise due a person or legal entity on all participating dairy operations in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this subpart or adopts or participates in adopting a scheme or device designed to evade this subpart, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects a registration or coverage election;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements or other arrangements to conceal the interest of a person or legal entity in a dairy operation for the purpose of obtaining DMC payments the individual or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No milk is produced and commercially marketed by a participating dairy operation;

(ii) The participating dairy operation has no appreciable assets;

(iii) The only source of capital for the dairy operation is the DMC payments; or

(iv) The represented dairy operation exists mainly for the receipt of DMC payments.

(b) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of this subpart, such person or legal entity will be ineligible to receive DMC payments in the year such scheme or device was adopted and the succeeding year.

(c) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, in violation of the requirements of this subpart will be subject to a 5-year denial of all DMC Program benefits. Such other equally serious actions may include, but are not limited to:

(1) Knowingly engaging in, or aiding in the creation of a fraudulent document or statement;

(2) Failing to disclose material information relevant to the administration of the provisions of this subpart, or

(3) Engaging in any other actions of a person or legal entity determined by the Deputy Administrator to be designed, or intended to, circumvent the provisions of this subpart.

(d) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance with the interest held by the person or legal entity in any other legal entity or joint operations; and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

§ 1430.420 Estates, trusts, and minors.

(a) DMC 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 benefits under this subpart is also required to:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by law;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable DMC 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.

§ 1430.421 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits under this subpart, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.422 Maintenance and inspection of records.

(a) Participating dairy operations are required to maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart, as may be requested by CCC or FSA. Such records and accounts are required to be retained for 3 years after the date of DMC payments to the participating dairy operation. Destruction of the records 3 years after the date of payment will be at the risk of the party undertaking the destruction.

(b) A participating dairy operation is required to allow authorized representatives of CCC, the Secretary, or the Comptroller General of the United States to 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 producer or dairy operation that does not comply with the provisions of paragraph (a) or (b) of this section, or that otherwise receives a payment for which it is not eligible, is liable for that payment and is required to repay it to FSA, with interest to run from the date of disbursement.

§ 1430.423 Refunds; joint and several liability.

(a) Any legal entity, including joint operations, joint ventures and partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil law, regulation, or other provision of law.

§ 1430.424 Violations of highly erodible and wetland conservation provisions.

The provisions of 7 CFR part 12 apply to this part.

§ 1430.425 Violations regarding controlled substances.

The provisions of 7 CFR 718.6 apply to this part.

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR HONEY

Sec.

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AUTHORITY: 7 U.S.C. 7231–7237, 7931–7936, and 9031–40; and 15 U.S.C. 714b and c.

SOURCE: 66 FR 15177, Mar. 15, 2001, unless otherwise noted.

§ 1434.1 Applicability.

(a) This part specifies the terms and conditions of Commodity Credit Corporation (CCC) nonrecourse marketing assistance loan (MAL) and loan deficiency payment (LDP) Programs for honey. MAL gains and LDPs for honey are limited by the adjusted gross income provisions specified in part 1400 of this chapter.

(b) Producers must comply with all provisions of this part and part 1421 of this chapter.

[74 FR 15656, Apr. 7, 2009, as amended at 80 FR 139, Jan. 2, 2015; 86 FR 70708, Dec. 13, 2021]

§ 1434.2 Administration.

(a) The regulations of this part will be administered under the general supervision of the Executive Vice President, CCC, and are carried out in the field by Farm Service Agency (FSA) State and county committees.

(b) State and county committees, representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee will take any action required by the regulations of this part that has not been taken by the county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee will

preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) An approving official of CCC may execute loans and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, will be null and void unless affirmed by the Executive Vice President, CCC.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 139, 141, Jan. 2, 2015]

§ 1434.3 Definitions.

The definitions in this section are applicable for all purposes of program administration. The terms defined in part 718 of this title are also applicable except where those definitions are inconsistent with the definitions in this section or for purpose of program instruments created under this part.

Approving official is a representative of CCC who is authorized by the Executive Vice President, CCC, to approve loan documents prepared under this part.

Calling a loan is accelerating or moving forward the maturity date of an outstanding MAL. A MAL can be called when the terms and conditions of the MAL note and security agreement are violated, a producer incorrectly certifies a loan quantity or makes any fraudulent representation with respect to obtaining a loan, removing or disposing of a farm-stored commodity pledged as collateral for a loan without authorization, to protect CCC's interest, or in emergency situations.

Charge is a fee, cost, and expense (including foreclosure costs) incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the honey.

CMA is a cooperative marketing association engaged in marketing honey.

County office is the local FSA office.

Crop year is the calendar year in which honey is extracted.

Ineligible honey is honey not eligible for a MAL under this part for which ineligibility will include, but is not limited to, honey from ineligible floral sources regardless of whether the honey meets other eligibility requirements.

Intermediate Bulk Container (IBC) is a bulk container with a polyethylene inner bottle with a galvanized steel protective cage with a 275 and 330 gallon capacity and is reusable.

Loan is a nonrecourse marketing assistance loan on honey.

Loan deficiency payment (LDP) means a payment made in lieu of a MAL when the CCC-determined value, which is based on the current local price in a county, is below the applicable county loan rate. The payment is the difference between the two rates times the eligible quantity.

Nontable honey is honey having a predominant flavor of limited acceptability for table use even though such honey may be considered suitable for table use.

Person is an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

Table honey is any honey having a good flavor of the predominant floral source which can be readily marketed for table use.

Representative is a receiver, executor, administrator, guardian, or trustee representing the interests of a person or an estate.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 139, Jan. 2, 2015]

§ 1434.4 Eligible producer.

(a) To be eligible to receive an individual or joint loan or LDP under this part, a person must:

(1) Have produced honey in the United States during the calendar year

for which a loan is requested and extracted on or before December 31 of such calendar year;

(2) Be responsible for the risk of keeping the bees and producing honey;

(3) Have a continuous beneficial interest in the honey from the time the honey was extracted through date of repayment of the loan;

(4) Store the honey pledged as loan collateral in eligible storage and in eligible containers that meet the requirements of §1434.7 and §1434.8, respectively; and

(5) Adequately protect the interests of CCC by providing security for a loan in accordance with the requirements in §1434.8 and by maintaining in good condition the honey pledged as security for a loan.

(b) A person who complies with paragraph (a) of this section, who enters into a contract to sell the honey used as collateral for a loan but retains a beneficial interest in the honey and who does not receive an advance payment from the purchaser to enter into the contract unless the purchaser is a cooperative marketing association (CMA) that is eligible under paragraph (g) of this section, remains eligible for a loan.

(c) Two or more applicants may be eligible for a joint loan if:

(1) The conditions in paragraphs (a) and (b) of this section are met with respect to the commingled honey collateral stored in the same eligible containers they are tendering for a loan; and

(2) The commingled honey is not used as collateral for an individual loan that has not been repaid.

(d) Heirs who succeed to a beneficial interest in the honey are eligible for a loan if they:

(1) Assume the decedent's obligation under a loan if such loan has already been obtained; and

(2) Assure continued safe storage of the honey if such honey has been pledged as collateral for a loan.

(e) A representative may be eligible to receive a loan on behalf of a person or estate who or which meets the requirements in paragraphs (a), (b), (c), and (d) of this section and that the honey tendered as collateral by the representative, in the capacity of a representative, will be considered as tendered by the person or estate being represented.

(f) A minor who otherwise meets the requirements of this part for a loan is eligible to receive a loan only if the minor meets one of the following requirements:

(1) A court or statute has conferred the right of majority on the minor;

(2) A guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A surety, by furnishing a bond, guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(g) A CMA that the Executive Vice President, CCC, determines meets the requirements for CMA's in part 1425 of this title may be eligible to obtain a loan on behalf of those members who themselves are eligible to obtain a loan provided that:

(1) The beneficial interest in the honey must always, until loan repayment or forfeiture, remain in the member who delivered the honey to the eligible CMA or its member CMA's, except as otherwise provided in this part; and

(2) The honey delivered to an eligible CMA will not be eligible for a loan if the member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this title.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 139, 141, Jan. 2, 2015]

§1434.5 Eligible honey.

To be eligible for a loan, the honey must:

(a) Have been produced by an eligible producer;

(b) Have been produced in the United States during the calendar year for which a loan is requested and extracted on or before December 31 of such calendar year;

(c) Be of merchantable quality deemed by CCC to be suitable for loan; that is, the honey:

(1) Is not adulterated;

(2) Has not been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization;

(3) Does not contain any ineligible honey floral sources; such as andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Price Support Division, FSA. If any blends of honey contain such ineligible honey, the lot as a whole will be considered ineligible for loan;

(4) Does not contain excessive bees or bee parts, paint chips, wood chips, or other foreign matter; and

(5) Is not fermenting; and

(d) Be stored in acceptable containers.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 141, Jan. 2, 2015]

§ 1434.6 Beneficial interest.

(a) To be eligible to receive MALs under this part a producer must have the beneficial interest in the honey that is tendered to CCC for a loan. The producer must always have had the beneficial interest in the honey unless, before the honey was extracted, the producer and a former producer whom the producer tendering the honey to CCC has succeeded had such an interest in the honey. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for loans. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive loans whether succession to the honey occurs before or after extraction so long as the heir otherwise complies with the provisions of this part.

(b) A producer is not be considered to have divested the beneficial interest in the honey if the producer retains title and control of the honey including the right to make all decisions regarding the tender of such honey to CCC for a loan, and the producer:

(1) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such honey if all other eligibility requirements are met and the option to purchase contains the following provision:

"Notwithstanding any other provision of this option to purchase or any other contract, title and control of the honey and beneficial interest in the honey, as specified in 7 CFR 1434.6, must remain with the producer until the buyer exercises this option to purchase the honey. This option to purchase will expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan which is secured by such honey;

(2) The date the CCC claims title to such honey; or

(3) Such other date as provided in this option."

(2) Enters into a contract to sell the honey if the producer retains title, and beneficial interest in the honey and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(c) If loans are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the honey must always have been in the producer-member who delivered the honey to the CMA or its member CMA's, except as otherwise provided in this section. Honey delivered to such a CMA is not be eligible for loans if the producer-member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this chapter.

(d) A producer may, before the final date for obtaining a loan for honey, re-offer as loan honey any honey that has been previously pledged if the loan was repaid with principal plus interest, the loan on such re-offered honey will have the same maturity date as the original loan.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64480, Oct. 18, 2002; 74 FR 15656, Apr. 7, 2009; 80 FR 139, 141, Jan. 2, 2015]

§ 1434.7 Approved storage.

(a) Loans will be made only on honey in approved storage, which will consist of a storage structure located on or off the farm that is determined by CCC to be under the control of the producer and affords safe storage for honey pledged as collateral for a loan. If the honey located in a farm storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a loan that is stored in the same structure.

(b) Producers may also obtain loans on honey packed in eligible containers and stored in facilities owned by third parties in which the honey of more than one person is stored if the honey that is to be pledged as collateral for a loan and that is stored identity preserved or is segregated from all other honey. Each container of the segregated quantity of honey must be marked with the producer's name, loan number, and lot number so as to identify the honey from other honey stored in the structure.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 139, 141, Jan. 2, 2015]

§ 1434.8 Containers and drums.

(a)(1) To be eligible for assistance under this part, honey must be packed in:

(i) CCC-approved, 5-gallon plastic containers;

(ii) 5-gallon metal containers;

(iii) Steel drums with a capacity not less than 5 gallons nor greater than 70 gallons, or

(iv) Plastic Intermediate Bulk Containers (IBC's).

(2) Honey stored in plastic containers must be determined safe and secure from all possibility of contamination.

(3) Honey storage containers used for these purposes must meet requirements of the Federal Food, Drug and Cosmetic Act, as amended and other specified requirements, as determined by CCC and must be generally fit for the purpose for which they are to be used.

(4) CCC-approved 5-gallon plastic containers must hold approximately 60 pounds of honey. The containers must be free and clear of leakage and punctures and of suitable purity for food contact use and meet food storage standards as provided by CCC. Plastic containers must be new or previously used only to store honey. Plastic containers previously used to store chemicals, pesticides, or any other product or substance other than honey are ineligible for honey storage. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover opening must not be damaged in any way that will prevent a tight seal. Containers that have been punctured and resealed will not be acceptable;

(5) The 5-gallon metal containers must hold approximately 60 pounds of honey, and must be new, clean, sound, uncased, and free from appreciable dents and rusts. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and container opening must not be damaged in any way that will prevent a tight seal. Containers that are punctured or have been punctured and resealed by soldering will not be acceptable; and

(6) The steel drums must be an open type and filled no closer than 2 inches from the top of the drums. Drums must be new or must be used drums that have been reconditioned inside and outside. Drums must be clean, treated inside and outside to prevent rusting, fitted with gaskets that provide a tight seal and have an inside coating suitable for honey storage.

(7) IBC's are bulk containers with a polyethylene inner bottle and a galvanized steel protective cage, a capacity of either 275 or 330 gallons, and are reusable. IBC's must be clean, sound and provide a tight seal.

(b) Honey is not be eligible to be pledged as collateral for loans if such honey is stored in:

(1) 55-gallon steel drums having a tare weight less than 38 pounds, 30-gallon steel drums having a tare weight less than 26 pounds, or drums having removable liners of polyethylene or other materials;

(2) Bung-type drums;

(3) Bulk tanks;

(4) Containers that do not meet the specified requirements of paragraph (a) of this section or other CCC specifications or requirements.

(5) Steel drums that are severely enough dented as to cause damage to their lining, improper seal, or stacking capabilities; and

(6) Rusted drums with corroded areas.

[66 FR 15177, Mar. 15, 2001, as amended at 69 FR 52169, Aug. 25, 2004; 80 FR 139, Jan. 2, 2015]

§ 1434.9 Determination of quantity.

The amount of a marketing assistance loan or loan deficiency payment will be based on 100 percent of the net weight in pounds of such quantity that is eligible to be pledged as security for the MAL or LDP and is certified by the producer and verified by the county office representative in the manner prescribed by CCC. Estimates of the quantity of honey will be made on the basis of 12 pounds for each gallon of the rated capacity of the container.

[80 FR 140, Jan. 2, 2015]

§ 1434.10 Application, availability, disbursement, and maturity.

(a) A producer must, unless otherwise authorized by CCC, request MALs and LDPs at the appropriate FSA county office responsible for administering the program as provided under part 718 of this title. To receive MALs and LDPs for honey, a producer must execute a note and security agreement or LDP application on or before March 31 of the year following the year in which the honey was extracted.

(b) A producer must request a loan at the county office of the county where the honey is stored if the honey is stored at the producer's farm. A producer who requests a loan on honey stored in eligible storage other than the producer's farm, may request loans at either the county office of the county where the storage facility is located or at the county office of the county where the producer's main place of business is located. A CMA must request loans at the county office for the county in which the principal office of the CMA is located unless the State committee designates another county office. If the CMA has operations in two or more States, the CMA must file its loan applications at the county office for the county in which its principal office for each State is located.

(c) MALs will be made on the honey as declared and certified by the producer in the manner specified by CCC at the time the honey is pledged as collateral for a MAL. The producer is also required to declare and certify the class of honey (table or non-table) and floral source of the honey in the manner specified by CCC when the honey is pledged as collateral for a MAL.

(d) The request for a loan will not be approved until all producers having an interest in the honey sign the note and security agreement and CCC approves such note and security agreement. The disbursement of loans will be made by county offices on behalf of CCC, for honey that:

(1) Has been extracted;

(2) Is in eligible storage; and

(3) Has not been blended or mixed with ineligible honey.

(e) MALs mature on demand, but not later than the last day of the ninth calendar month following the month in which the note and security agreement was approved.

(1) When the maturity date falls on a non-workday for county offices, CCC will extend the final date to the next workday. Before the date specified in paragraph (a) of this section, a producer may re-offer as MAL collateral any eligible honey that has been offered previously for a MAL if the previous MAL has been repaid at principal plus interest only.

(2) The maturity date of any MAL may not be extended.

(f) If, after a loan is made, CCC determines that the producer or the honey collateral is not in compliance with any of the provisions of this part, the producer must refund the total amount disbursed under loan and charges plus interest, including late payment interest as provided in part 1403 of this title.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002; 80 FR 140, 141, Jan. 2, 2015]

§ 1434.11 Fees and interest.

(a) A producer must pay a nonrefundable MAL service fee. The MAL service

fee will be the smaller of one-half of 1 percent (.005) times the gross MAL amount or $45 per MAL plus $3 for each storage structure over one.

(b) Interest that accrues with respect to a loan wil be determined in accordance with part 1405 of this chapter.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 140, 141, Jan. 2, 2015]

§ 1434.12 Liens.

(a) CCC's security interest in the honey pledged as collateral is first and superior to all other security interests.

(b) The county office will file or record, as required by State law, all financing statements needed to perfect a security interest in honey pledged as collateral for a loan. The cost of filing and recording will be for the account of CCC.

(c) If there are any other security interests, liens, or encumbrances on the honey, CCC will obtain waivers that fully protect the interest of CCC even though the security interests, liens, or encumbrances are satisfied from the loan proceeds. No additional security interests, liens, or encumbrances will be placed on the honey after the loan is approved.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 141, Jan. 2, 2015]

§ 1434.13 Transfer of producer's interest prohibited.

Absent written approval from CCC, the producer may not transfer either the remaining interest in, or right to redeem, the honey pledged as collateral for a MAL on honey nor may anyone acquire such interest or right. Subject to the provisions of §1434.17, a producer who wishes to liquidate all or part of a MAL by contracting for the sale of the honey must obtain written approval from the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval will be subject to the terms and conditions in the applicable form, copies of which may be obtained by producers at the FSA county office.

[80 FR 140, Jan. 2, 2015]

§ 1434.14 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC will not assume any loss in quantity or quality of the loan collateral.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 141, Jan. 2, 2015]

§ 1434.15 Personal liability..

(a) As part of the application for an individual or joint MAL or LDP, each producer agrees that:

(1) By signing the MAL note and security agreement, the producer must:

(i) Provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

(ii) Not remove or dispose of any amount of the loan quantity without prior written approval from CCC in accordance with this section.

(2) That violation of the terms and conditions of this part and the MAL note and security agreement will cause harm or damage to CCC in that funds may be disbursed to the producer for a MAL quantity that is not actually in existence or for a quantity for which the producer is not eligible.

(b) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification or:

(1) Unauthorized removal of honey, which includes, but is not limited to, the movement of any loan quantity of honey from the storage structure in the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with §1434.14;

(2) Any unauthorized disposition, which includes, but is not limited to, the conversion of any loan quantity pledged as collateral for a loan without prior written authorization from the county committee in accordance with this section.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct that is in violation of this

section. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages will be assessed in addition to any loan refund and other charges that may be due. The amount of such damages will be computed using the quantity of honey that is involved in the violation and the following formula. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by 10 percent of the loan rate applicable to the loan note for each offense.

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 10 percent of the loan rate applicable to the loan note.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee will:

(1) Require repayment of the loan principal applicable to the loan quantity involved in the violation plus charges and interest; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan for all of the honey under loan, plus charges and interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee will call the loan involved in the violation, and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Will not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm; and (iii) Consumption of loan collateral.

(g) If there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, the county committee will notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i)(1) If a producer:

(i) Makes any fraudulent or misleading representation in obtaining a loan, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall become payable upon demand by CCC. The producer is liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs that CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts;

(E) Late payment interest as may be provided for in part 1403 of this title; and

(F) Liquidated damages assessed under paragraph (c) of this section; and

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent or misleading representation to CCC or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with this section, the value of the settlement for such collateral removed by CCC is determined by CCC according to this section.

(j) A producer is personally liable for any damages resulting from honey removed by CCC, containing mercurial

compounds or other substances poisonous to humans, animals, or food commodities that are contaminated.

(k) If the amount disbursed under a loan or in settlement thereof exceeds the amount authorized under this part, the producer is personally liable for repayment of such excess and charges, plus interest, and for any other sanction as may be allowed by law.

(l) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer is personally liable for repayment of the amount of such deficiency and charges, plus interest.

(m) In the case of joint MALs, the personal liability for the amounts specified in this section are joint and several on the part of each producer signing the MAL note. Further, each producer who is a party to a joint MAL will be jointly and severally liable for any violation of the terms and conditions of the note and security agreement, and the regulations in this part. Each such producer also remains liable for repayment of the entire MAL amount until the MAL is fully repaid without regard to such producer's claimed share in the honey, or MAL proceeds, after execution of the note and security agreement by CCC.

(n) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

(o) Remedies set out in this section are in addition to remedies the CCC will have through its security interest on honey that secures the repayment of the loan made on the honey.

(p) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.

[66 FR 15177, Mar. 15, 2001, as amended at 74 FR 15657, Apr. 7, 2009; 80 FR 140, Jan. 2, 2015]

§ 1434.16 Release of the honey pledged as collateral for a MAL.

(a)(1) A producer may not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the honey remaining as loan collateral by paying to CCC the amount of the loan and any charges that had been made by CCC to the producer with respect to the quantity of the honey released, plus interest.

(3) When the proceeds of a sale of honey are needed to repay all or part of a farm stored MAL, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval will be subject to the terms and conditions in the applicable form, copies of which may be obtained by producers at the county office. Any such approval will not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to any MAL indebtedness if full payment of such amounts is not received by the county office.

(b) The note and security agreement will not be released until all loan liability has been satisfied in full.

(c) After satisfaction of a MAL, CCC will release CCC's security interest in the honey at the producer's request. The producer is responsible for payment of any fee for such release if such fee can be determined.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 140, 141, Jan. 2, 2015]

§ 1434.17 Liquidation of loans.

(a) The producer is required to repay the loan on or before maturity by payment of the amount of loan, plus any charges, plus interest.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount, plus charges, plus interest will be established. CCC will inform the producer before the maturity date of the loan of the date by which the loan

must be settled or a claim will be established in accordance with part 1403 of this title.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 141, Jan. 2, 2015]

§ 1434.18 Loan repayments.

(a) A honey producer may repay a nonrecourse MAL during the loan period at a rate that is the lesser of:

(1) The principal, plus interest; or

(2) The alternative repayment rate for honey as determined by the Secretary.

(3) In the event of a severe disruption to marketing, transportation, or related infrastructure, the Secretary may modify the repayment rate otherwise applicable under this section for MALs. Any adjustment made to the repayment rate for MALs for honey under this part will be in effect on a short-term and temporary basis, as determined by the Secretary.

(b) To the extent practicable, CCC will determine and announce the alternative repayment rate, based upon the prevailing domestic market price for honey, on a monthly basis.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002; 74 FR 15657, Apr. 7, 2009; 80 FR 140, 141, Jan. 2, 2015]

§ 1434.19 Settlement.

(a) The value of the settlement of loans will be made by CCC on the following basis:

(1) With respect to nonrecourse loans, the schedule of premiums and discounts for the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer must pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the value of the collateral at settlement is greater than the amount due, the excess will be paid to the producer or, if applicable, to the producer and any secured creditor of the producer.

(2) With respect to honey that is delivered from other than an approved warehouse, settlement will be made by CCC on the basis of the basic loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(b) CCC will not assume any loss in quantity or quality of the loan collateral for honey MALs.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 140, 141, Jan. 2, 2015]

§ 1434.20 Foreclosure.

(a) Upon maturity and nonpayment of the loan, title to the unredeemed honey securing the loan will vest in CCC.

(b) If the total amount due on a loan or the unpaid amount of the note and charges, plus interest is not satisfied upon maturity, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may also be effected without removing the honey from storage. The honey may be processed before sale and CCC may become the purchaser of the whole or any part of the honey at either a public or private sale.

(1) If the value of the collateral computed at settlement is less than the amount due, the producer must pay to CCC the amount of such deficiency and charges, plus interest on such deficiency and CCC may take any action against the producer to recover the deficiency; or

(2) If the proceeds received from the sale of the honey so computed are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the honey, such excess will be paid to the producer or, if applicable, to any secured creditor of the producer.

[66 FR 15177, Mar. 15, 2001, as amended at 80 FR 141, Jan. 2, 2015]

§ 1434.21 Loan deficiency payments.

(a) LDPs will be available for honey.

(b) In order to be eligible to receive LDP for a crop of honey, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loan in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) Submitted a request for a honey LDP on the form as CCC prescribes.

(4) Comply with §§1434.7 and 1434.8 or provide evidence of production as determined by CCC for such quantity; and

(5) Otherwise comply with all program requirements.

(c) The LDP rate for a crop will be the amount by which the MAL rate exceeds the rate at which CCC has announced that producers may repay their MAL as specified in §1434.18.

(d) The LDP applicable to a crop of honey will be computed by multiplying the LDP rate, as determined as specified in paragraph (c) of this section, by the quantity of honey the producer is eligible to pledge as collateral for a price support MAL for which an LDP is requested.

(e) Notwithstanding any provisions in this section, LDPs may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for an LDP if CCC determines that such quantity represented the quantity for the number of containers of honey initially certified for the LDP when the payment was made.

(f) When applying for an individual LDP, each producer agrees:

(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 LDP; and

(2) That violation of the terms and conditions of this part will cause harm or damage to CCC in that funds may be disbursed to the producer for a LDP quantity that is not actually in existence or for a quantity for which the producer is not eligible.

(g) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002; 74 FR 15657, Apr. 7, 2009; 80 FR 141, Jan. 2, 2015]

§1434.22 Death, incompetency, or disappearance; appeals; other loan provisions.

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment will, upon proper application to the county office that made the loan, be made to the persons who would be entitled to such producer's share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part will be subject to the provisions of 7 CFR parts 11 and 780.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002. Redesignated at 74 FR 15657, Apr. 7, 2009; 80 FR 141, Jan. 2, 2015]

PART 1435—SUGAR PROGRAM

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AUTHORITY: 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

SOURCE: 67 FR 54928, Aug. 26, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 1435.1 Applicability.

(a) The regulations in this part specify the terms and conditions under which the Farm Service Agency (FSA) will administer the Sugar Program for the Commodity Credit Corporation (CCC) to:

(1) Make loans and enter agreements with eligible processors,

(2) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,

(3) Administer sugar marketing allotments, and

(4) Administer an inventory disposition program to sell CCC inventory to bioenergy producers and exchange CCC inventory for processor reductions in production or certificates of quota entry.

(b) [Reserved]

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15363, Apr. 6, 2009; 80 FR 141, Jan. 2, 2015]

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

Ability to market means, for purposes of determining the State cane sugar allotments and sugarcane processor allocations for Hawaii and Puerto Rico, the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year; for determining the remaining State cane sugar allotments, the highest single year of sugar production for the State during the 1999 through 2003 crop years; for determining the sugarcane processor allocations for mainland cane States other than Louisiana, the highest single year of sugar production for the processor during the 1999 through 2003 crop years; and, for determining the sugarcane processor allocations for Louisiana, the simple average of two amounts for each processor, including:

(1) The production of sugar for the processor, stated in short tons, raw value, during Crop Year 2003, as determined by CCC; and

(2) The simple average of 3 years of the processor's production of sugar, stated in short tons, raw value, from among the 1999 through 2003 crop years, excluding the year in which the production was the highest and the year in which the production was the lowest. With respect to the 2003 crop year, each processor's production shall be the same as determined under paragraph (1).

Allocation means the division of the beet sugar allotment among the sugar

beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

Beet sugar means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses, or in-process beet sugar, whether produced domestically or imported.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

CCC means the Commodity Credit Corporation.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane sugar refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

Crop year means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses is considered to be from the crop year the de-sugaring occurred.

Deputy Administrator means the Deputy Administrator, Farm Programs, FSA, or designee.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Edible syrups means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

Executive Vice President, CCC, means the Executive Vice President, CCC, or designee.

Facility means a factory, mill, or plant.

Farm means that entity as defined in §718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means that year beginning October 1 and ending the following September 30.

FSA means Farm Service Agency.

Human consumption means sugar for use in human food, beverages, or similar products.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

In-process beet sugar means the intermediate sugar-containing product, as CCC determines, produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported.

In-process cane sugar means the intermediate sugar-containing product, as CCC determines, produced from the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption.

Market or marketing means the transfer of title associated with the sale or other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the Sugar Loan Program, exportation of sugar from the United States Customs Territory eligible to receive credits under reexport programs for refined sugar or

sugar-containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under the Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

Nonrecourse loan means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at loan maturity, in satisfaction of loan indebtedness.

Overall allotment quantity means, on a national basis, the total quantity of domestically produced sugar, raw value, processed from sugarcane, sugar beets or in-process beet sugar (whether the sugar beets or in-process beet sugar are produced domestically or imported), and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Past processing means, for determining Hawaii and Puerto Rico's allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for determining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Per-acre yield goal means a State's yield level that is established at not less than the State's two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

Proportionate share State means a State with an established allotment and more than 250 sugarcane producers in the State, other than Puerto Rico.

Raw sugar means any sugar that is to be further refined or improved in quality other than in-process sugar.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization $-$ 92) $\times$ 0.0175] + 0.93} $\times$ actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the ''total sugar content'' (*i.e.*, the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as CCC determines.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets,

sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar.

Sugar products means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

Sugarcane processor means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S. market value means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

USDA means the United States Department of Agriculture.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55062, Sept. 13, 2004; 74 FR 15363, Apr. 6, 2009]

§ 1435.3 Maintenance of records.

(a) Each sugar beet processor, sugarcane processor, importer of sugars, syrups and molasses, and cane sugar refiner or any person having custody of records required by CCC to operate the sugar program must retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed under subpart B;

(2) Market data are reported to CCC under subpart C of this part; and

(3) Marketings are conducted under marketing allotments under subpart D of this part.

(b) [Reserved]

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.4 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action not under this part; or

(2) Require a county committee to withhold taking any action not under this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

§ 1435.5 Other regulations.

The following are applicable to this part:

(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(b) Part 718—Provisions applicable to multiple programs.

(c) Part 780—Appeal regulations.

(d) Part 1403—Debt settlement policies and procedures.

(e) Part 1405—Loans, purchases, and other operations.

Subpart B—Sugar Loan Program

§ 1435.100 Applicability.

(a) The regulations of this subpart set forth the terms and conditions under which CCC will make nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically grown sugarcane may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable.

(b) The national average loan rate for refined beet sugar from domestically grown sugar beets may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable

(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.

(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009; 80 FR 141, Jan. 2, 2015; 86 FR 70708, Dec. 13, 2021]

§ 1435.102 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.

(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC's approval of the note and security agreement and the CCC storage agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;

(3) May not have been processed from imported sugarcane, sugar beets in-process sugars, or molasses;

(4) Must have been processed in the United States; and

(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.

(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size; and

(ii) Free of objectionable color, flavor, odor, moisture or other characteristic that would impair its merchantability or that would impair or prevent its use for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.103 Availability, disbursement, and maturity of loans.

(a) Before obtaining a loan, a processor must:

(1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.

(2) Execute a note and security agreement, and storage agreement with CCC;

(3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;

(4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(5) If there are any liens or encumbrances on sugar or in-process sugar pledged as loan collateral, obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after loan approval; and

(6) Agree to reimburse CCC for any costs incurred as a result of the failure of the processor to obtain the waivers specified in subparagraph (5).

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.102.

(d) Raw cane sugar loan disbursements shall be made without regard to the actual polarity or quality factors of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(e)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates under § 1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan must:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the first loan was made; and

(3) Mature in 9 months less the number of months that the first loan was in effect.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;

(2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(3) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the loan collateral; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, before the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the next business day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

(1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and

(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.

(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

Subpart C—Information Reporting and Recordkeeping Requirements

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or a Federal holiday, the report shall be due the next business day.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption must report such information as CCC requires, including the quantities of the products imported and the sugar content or equivalent of the products.

(f) The Secretary will collect information on the production, consumption, stocks and trade of sugar in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(g) The Secretary will collect publicly available information on the production, consumption, and trade of high fructose corn syrup in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(h) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(i) By November 20 of each year, sugar beet processors, sugarcane processors, sugarcane refiners, and importers of sugars, syrups, and molasses, as selected by CCC, will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its information submitted to CCC during the previous October 1 through September 30 period.

(j) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

[67 FR 54928, Aug. 26, 2002, as amended at 71 FR 16200, Mar. 31, 2006; 74 FR 15365, Apr. 6, 2009]

§ 1435.201 Civil penalties.

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.200(a) through (e), is subject to a civil penalty of no more than the amount specified at § 3.91(b)(10)(ii) of this title for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250–0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of an affirmation of the assessment of

civil penalties, with the National Appeals Division under part 780 of this title.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15635, Apr. 6, 2009; 75 FR 17561, Apr. 7, 2010]

Subpart D—Flexible Marketing Allotments For Sugar

§ 1435.300 Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

(1) Processor marketings of sugar domestically processed from sugar beets or in-process beet sugar, whether such sugar beets or in-process beet sugar were produced domestically or imported,

(2) Processor marketings of sugar processed from sugarcane,

(3) Distribution of a processor's allocation to producers in proportionate share States, and

(4) Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to marketing imported raw or refined sugar.

(c) This subpart applies throughout the United States and Puerto Rico.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15365, Apr. 6, 2009]

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

(1) Quantity of sugar that will be subject to human consumption in the United States during the crop year;

(2) Quantity of sugar that will provide for reasonable carryover stocks;

(3) Quantity of sugar that will be used for human consumption in the United States from carry-in stocks;

(4) Quantity of sugar that will be available from domestically processed sugarcane, sugar beets, and in-process beet sugar; and

(5) Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in § 1435.200.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15365, Apr. 6, 2009]

§ 1435.302 Establishment of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugarcane, sugar beets, or in-process beet sugar, whether the sugar beets or in-process beet sugar is domestically produced or imported at a level:

(1) That is sufficient to maintain raw and refined sugar prices above minimum prices to avoid forfeiture of loans to the CCC, but

(2) Not less that 85 percent of estimated quantity of sugar for domestic human consumption for the crop year.

(b) Determinations under this section to establish marketing allotments will be published in the FEDERAL REGISTER and accompanied by a statement of the reasons for the determination.

[74 FR 15365, Apr. 6, 2009]

§ 1435.303 Adjustment of the overall allotment quantity.

(a) The overall allotment quantity may be adjusted, as CCC determines appropriate, but never to a quantity less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year:

(1) To avoid forfeiture of sugar loan collateral to CCC,

(2) Ensure adequate supplies of raw and refined sugar in the domestic market, and,

(3) To reflect changes in estimated sugar consumption, stocks, production, or imports based on re-estimates under §1435.301.

(b) Determinations to adjust the overall allotment quantity will be published in the FEDERAL REGISTER and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and sugar products any individual processor marketed by the time of the reduction exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's allocation under an allotment next established.

[67 FR 54928, Aug. 26, 2002. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

§1435.304 Beet and cane sugar allotments.

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15365, Apr. 6, 2009]

§1435.305 State cane sugar allotments.

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor's allocation under 1435.308.

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

(1) Past marketings of cane sugar,

(2) Past processing of cane sugar, and

(3) The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States' respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reassigned as provided in §1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

[67 FR 54928, Aug. 26, 2002. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

§1435.306 Allocation of marketing allotments to processors.

(a) Each sugar beet processor's allocation, other than a new entrant's, of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

(1) A beet processor's share is calculated as the beet processor's adjusted weighted average sugar production divided by the sum of all beet processors' adjusted weighted average sugar production.

(2) A beet processor's weighted average sugar production equals 0.25 times its 1998-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar beet processing factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of beet processors' weighted average

sugar production for closing a sugar beet processing factory during the 1998 through 2000 crop years:

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processor's, other than a new entrant's, allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section will not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products as long as such exports are not eligible to receive credits under reexport programs administered by the Foreign Agricultural Service for refined sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption, except for the sale of sugar for the production of ethanol or other bioenergy under the Feedstock Flexibility program or the sale of sugar for the production of polyhydric alcohol under the Polyhydric Alcohol program administered by the Foreign Agricultural Service; and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales;

(i) Are made before May 1, and

(ii) Reported to CCC within 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) Paragraph (d) of this section also will not apply to the marketing of beet sugar processed from purchased in-process beet sugar if the processor purchased the in-process beet sugar before October 1, 2008.

(h) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may only use cane sugar to fill such allocation.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

§ 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower's contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written certification from the processor that will accept the additional sugarcane deliveries that its processing capacity will not be exceeded,

(3) CCC will only consider requests for transfer of allocation submitted during the month of May. The request must include the grower's sugar production history for crop years 1997 through 2003. The facility with the grower's history will be required to certify the history when requested by the grower, and

(4) Allocation transfers will be effective for the next fiscal year after the request is submitted to CCC, that is beginning October 1.

(c) If a sugar beet processing facility or a sugarcane processing facility located in a non-proportionate share State is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed facility's allocation based on the contribution of the growers' production history to the closed facility's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processor that will accept the additional deliveries,

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers, and

(4) Determinations by the CCC will be made within 60 days after the filing of the petition.

(d) Subject to a transfer of allocation, if any, described in paragraph (c) of this section being completed, CCC will consider a processor to be permanently terminated and eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding,

(3) Has not processed sugarcane or sugar beets for 2 consecutive crop years,

(4) Has notified CCC that the processor has permanently terminated operations, or

(5) Has been determined by CCC to have permanently terminated operations.

(e) If a processor of beet sugar purchases all the assets of another processor, then CCC will immediately transfer allocation commensurate with the purchased facilities' production history, unless the allocation has already been transferred under paragraph (d) of this section.

(f) If a processor of beet sugar purchases some, but not all, of the assets of another processor, then CCC will assign a pro rata portion of the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount.

(1) The assignment of the allocation will apply to the crop year in which the sale occurs and for each subsequent year.

(2) The buyer of the facilities as specified in paragraph (e) of this section may fill the assigned allocation with production from other facilities it owns if the purchased facilities lack the production to fill the assigned allocation.

[74 FR 15366, Apr. 6, 2009]

§ 1435.308 New entrants.

(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year,

(2) CCC will consider any adverse effects of the allocation upon existing processors and producers,

(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,

(4) A new entrant's allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and

(5) A new entrant will be provided, as determined by CCC:

(i) A share of its State's cane allotment if the processor is located in Hawaii, Florida, Louisiana, or Texas or

(ii) A share of the overall mainland cane allotment if the processor is located in any mainland State not listed in paragraph (a)(5)(i) of this section.

(b) For proportionate share States, CCC will establish proportionate shares for the sugarcane required to fill the allocation.

(c) If a new entrant beet processor constructs a new facility or reopens a facility that currently has no allocation, but last produced beet sugar from sugar beets and sugar beet molasses prior to the 1998 crop year, CCC will:

(1) Assign an allocation to the new entrant to enable it to achieve a facility utilization rate comparable to other similarly-situated sugar beet processors and

(2) Reduce all other beet processor allocations by a like amount on a pro rata basis.

(d) If a new entrant acquires an existing facility with production history that processed sugar beets for the 1998 or subsequent crop year, CCC will:

(1) Assign the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount, or

(2) If the new entrant and the processor holding the allocation of the existing facility cannot agree on an allocation amount, the new entrant will be denied a beet sugar allocation.

[74 FR 15366, Apr. 6, 2009]

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, from time to time, whether sugar beet or sugarcane processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

(1) First, to allocations of other sugarcane processors within that State based on each processor's initial allocation share of the State's allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State's initial share of the cane sugar allotment, but no State may receive reassigned State allotment such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports of raw cane sugar.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

(e) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (e)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (e)(1) and (e)(2) of this section have been implemented,

be reassigned to imports of raw cane sugar.

(f) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55063, Sept. 13, 2004; 69 FR 58037, Sept. 29, 2004; 70 FR 28181, May 17, 2005; 74 FR 15366, Apr. 6, 2009]

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under §1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001, or

(B) Obtained an allocation transfer from a predecessor mill,

(ii) Sugar production from base acreage, as established under §1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then

(iii) All other sugar production.

(2) In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

(e) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004; 74 FR 15366, Apr. 6, 2009]

§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State's allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:

(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the 2 highest years from among the 1999 through 2001 crop years;

(2) Adjust the per-acre yield goal by the State average recovery rate;

(3) Convert the State cane sugar allotment into a State acreage allotment by dividing the State allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all adjusted acreage bases in the State as determined under § 1435.312; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.312 Establishment of acreage bases under proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed (meaning only those varieties dedicated to the production of sugarcane to produce sugar for human consumption) on the farm in the 2 highest of the 1999 through 2001 crop years. Acreage considered planted shall be determined under § 1435.315.

(b) In establishing crop acreage bases, CCC will:

(1) Not consider acreage prevented from planting, and

(2) Consider acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date CCC determines and announces. Late-filed acreage reports will be accepted as the Deputy Administrator determines appropriate.

(d) The farm's crop acreage base shall be used to determine the farm's proportionate share.

(e) The regulations at part 718 of this title shall apply to this subpart, except reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer's acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(1) All farm owners must agree in writing to the transfer.

(2) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

(b) Sugarcane acreage base that has been converted to nonagricultural use on or before May 13, 2002, may be transferred to other land suitable for the production of sugarcane under the following terms:

(1) CCC must notify 1 or more affected landowners within 90 days of becoming aware of the conversion, of their rights to transfer the base to 1 or more farms owned by the landowner;

(2) The landowner has 90 days from the date the landowner was notified to transfer the base;

(3) If the landowner does not exercise this transfer right, the grower of record will have 90 days after being notified by CCC to transfer the base to 1 or more farms owned by the grower;

(4) If the transfers as specified under paragraphs (b)(2) or (3) of this section are not accomplished during the specified periods, FSA county committee will place the base into a pool for possible reassignment to other farms;

(5) After providing notice to farm owners, operators and growers of record in the county, the committee will accept requests from farm owners, operators, and growers in the county;

(6) The county committee will assign the base to other sugarcane farms in

the county that are eligible and capable of accepting the acreage base, based on a random drawing among requests received under paragraph (b)(5) of this section;

(7) Any unassigned base will be made available to the State FSA committee and be allocated to remaining FSA county committees in the State representing counties with farms eligible for assignment of the base, based on a random drawing; and

(8) After the acreage base has been reassigned, the acreage base will remain on the farm and subject to the transfer provisions of paragraph (a) of this section.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

§ 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

§ 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:
(i) Existence of the crop;
(ii) Use made of the crop;
(iii) Lack of crop; or
(iv) Disaster condition affecting the crops.
(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.
(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under § 1435.318.

§ 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor's allocation or any producer's proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

§ 1435.318 Penalties and assessments.

(a) Any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation will be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.
(b) CCC may assess liquidated damages, as specified in a surplus allocation survey and agreement, with respect to a surplus allocation still existing after the end of a crop year if the processor had a surplus allocation because the processor provided incomplete or erroneous information to CCC.
(c) Under § 359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:
(1) Processed by a sugarcane processor that does not exceed its marketing allocation; or
(2) Diverted to a use other than sugar or seed if:
(i) The sugarcane producer requests and pays for a CCC field inspection, and
(ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.
(d) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.
(e) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed the amount specified at § 3.91(b)(10)(iii) of this title. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.
(f) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than the amount specified at § 3.91(b)(10)(iv) of this title for each violation.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009; 75 FR 17561, Apr. 7, 2010]

§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250–0501.

(b) For issues arising under section 359d establishing allocations for marketing allotments, and sections 359f(b) and (c), and section 359i of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC 20250–9200. Any hearing conducted under this paragraph shall be in accordance with instructions issued by USDA's Judicial Officer.

(c) For issues arising under §§ 359a–359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title. For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39814, July 1, 2004]

Subpart E—Disposition of CCC Inventory

SOURCE: 78 FR 45446, July 29, 2013, unless otherwise noted.

§ 1435.400 General statement.

This subpart will be applicable in the event that raw, refined, or in-process sugar is owned and held in CCC inventory (accumulated under the program authorized by section 156 of the Federal Agriculture Improvement and Reform Act, as amended) as specified in subpart B of this part.

§ 1435.401 CCC sugar inventory disposition.

(a) CCC will dispose of inventory in the following manner, if CCC has not determined there is an emergency shortage of sugar for human consumption in the domestic market:

(1) By sale to bioenergy producers under the Feedstock Flexibility Program as specified in subpart G of this part,

(2) By transfer to sugarcane and sugar beet processors under the Processor Sugar Payment-In-Kind Program as specified in subpart F of this part,

(3) By the buyback of certificates of quota eligibility (CQEs), or

(4) By the use of any other authority for the disposition of CCC-owned sugar for nonfood use or otherwise in a manner that does not increase the net quantity of sugar available for human consumption in the United States.

(b) CCC may use any of its authority for the disposition of CCC-owned sugar, if CCC has determined there is an emergency shortage of sugar for human consumption in the domestic market caused by war, flood, hurricane, or other natural disaster, or similar event, as determined by CCC.

Subpart F—Processor Sugar Payment-In-Kind (PIK) Program

SOURCE: 67 FR 54928, Aug. 26, 2002, unless otherwise noted. Redesignated at 74 FR 15367, Apr. 6, 2009.

§ 1435.500 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for a CCC loan.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

§ 1435.501 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is

in effect, processors who desire to participate in the program must submit a bid to CCC, on a form prescribed by CCC, that specifies:

(1) For a program involving acreage diversion, the amount of acreage to be reduced by producers who have contracts for delivery of sugar beets or sugar cane to the processor and contains the information CCC determines necessary to conduct the program and includes but is not limited to:

(i) The number of acres that the processor, acting in conjunction with the producers, will divert;

(ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable,

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

§ 1435.502 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected

sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

§ 1435.503 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

§ 1435.504 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

§ 1435.505 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

Subpart G—Feedstock Flexibility Program

SOURCE: 78 FR 45446, July 29, 2013, unless otherwise noted.

§ 1435.600 General statement.

(a) The provisions of this subpart will be applied when CCC determines that buying sugar is necessary to avoid forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) This subpart will be applicable to:

(1) Any sugar seller who contractts with CCC to sell sugar, an

(2) Any bioenergy producer who contracts with CCC to purchase sugar for the production of bioenergy.

§ 1435.601 Sugar surplus determination and public announcement.

(a) CCC will estimate by September 1 the quantity of sugar that will be made available for purchase and sale under FFP for the following crop year.

(b) Not later than January 1, April 1, and July 1 of the fiscal year, CCC will re-estimate the quantity of sugar that will be made available for purchase and sale under the FFP for the crop year.

(c) CCC will announce by press release the estimates in paragraphs (a) and (b) of this section, which will reflect CCC's forecast of sugar likely to be forfeited to CCC and any uncertainty surrounding that forecast.

§ 1435.602 Eligible sugar to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar for FFP that is eligible to be used as collateral under the CCC Sugar Loan Program, as specified in §1435.102.

(b) Raw sugar, refined sugar, or in-process sugar purchased directly from any domestic sugar beet or sugarcane processor that made the raw sugar, refined sugar, or in-process sugar will be credited against the processor's sugar marketing allocation. (The definition for ''marketing'' in §1435.2 applies to this subpart.)

(c) CCC will only purchase sugar located in the United States.

(d) CCC will evaluate an offer to sell sugar to CCC based upon CCC's estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing thick juice (an in-process sugar) would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the volume of the thick juice in evaluating the per unit sales price.

(e) CCC will only purchase the sugar if such purchase would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

§ 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

§ 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) [Reserved]

§ 1435.605 Competitive procedures.

(a) CCC will generally issue tenders for bids, before entering into contracts with any eligible sugar seller or buyer, with the intent of selecting the bid(s) that represents the least cost to CCC of removing sugar from the market.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of forfeitures of sugar to CCC.

§ 1435.606 Miscellaneous.

(a) As a sugar buyer, a bioenergy producer must take possession of the sugar no more than 30 days from the date of CCC's purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for the sugar purchased under this program. A bioenergy producer must assume any storage costs accrued from date of contract to date of taking possession of the sugar.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof as specified by CCC that the sugar has been used in the bioenergy factory for the production of bioenergy and permit access for USDA to verify compliance.

§ 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

Sec.

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AUTHORITY: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714 through 714p.

SOURCE: 66 FR 4612, Jan. 18, 2001, unless otherwise noted.

§ 1436.1 Applicability.

(a) The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by State law, CCC may adapt certain procedures relating to those issues that may vary between States.

(b) Unless specified otherwise in this part, for FSFL microloans, all provisions of this part apply.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

§ 1436.2 Administration.

(a) The Farm Storage Facility Loan Program will be administered under the general supervision of the Executive Vice President, CCC or designee and will be carried out in the field by FSA State committees, FSA county committees and FSA employees.

(b) FSA State committees, FSA county committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The FSA State committee will take any action required by these regulations that has not been taken by the county committee. The FSA State committee will also:

(1) Correct, or require the FSA county committee to correct, any action taken by such FSA county committee that is not in accordance with the regulations of this part; and

(2) Require the FSA county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or FSA county committee will preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or FSA county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and FSA county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Farm Storage Facility Loan Program.

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, will be void.

(g) The purpose of the Farm Storage Facility Loan Program is to provide CCC funded loans for producers of grains, oilseeds, pulse crops, sugar, hay, renewable biomass, fruits and vegetables (including nuts), aquaculture, butter, cheese, eggs, floriculture, honey, hops, maple sap, meat, milk, poultry, rye, yogurt, and other grains and storable commodities, as determined by the Secretary, to construct or upgrade storage and handling facilities for the eligible facility loan commodities they produce.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

§ 1436.3 Definitions.

The following definitions will be applicable to the program authorized by this part and will be used in all aspects of administering this program:

Aggregate outstanding balance means the sum of the outstanding balances of all loans disbursed under this part to

each borrower signing the note and security agreement.

Aquaculture, for FSFL purposes, means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans.

ARS means the Agricultural Research Service of the USDA.

Assumption means the act or agreement by which one borrower takes over or assumes the debt of another borrower.

CCC means the Commodity Credit Corporation.

Cold storage facility means a facility or rooms within a facility that are specifically designed and constructed for the cold temperature storage of perishable commodities. The temperature and humidity in these facilities must be able to be regulated to specified conditions required for the commodity requiring storage.

Collateral means the facility and any real estate used to secure the loan.

Commercial facility means any facility, used in connection with or by any commercial operation including, but not limited to, grain elevators, warehouses, dryers, processing plants, or cold storage facilities used for the storage and handling of any agricultural product, whether paid or unpaid. Any structure suitable for the storage of an agricultural product that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation.

Commercial storage means the storing of any agricultural product, whether paid or unpaid, for persons other than the owner of the structure, except for family members and tenants or landlords with a share in the eligible facility loan commodity requiring storage.

Crop of economic significance means any insurable facility loan commodity that contributes 10 percent or more of the total expected value of all crops grown by the loan applicant except if the expected liability under the catastrophic level of crop insurance for a crop is equal to or less than the administrative fee for the crop, that crop shall not be economically significant.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, including any designee.

Facility means any on-farm storage and handling facility or structure, storage and handling equipment, or storage and handling truck, for which a producer may receive FSFL financing to acquire or upgrade. Such facilities can be new or used, fixed or portable.

Facility loan commodity means corn, grain sorghum, oats, wheat, barley, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, other grains and oilseeds as determined and announced by CCC, dry peas, lentils, or chickpeas harvested as whole grain, peanuts, hay, renewable biomass, fruits and vegetables (including nuts), aquaculture, floriculture, hops, milk, rye, maple sap, honey, meat, poultry, eggs, cheese, butter, yogurt, and other storable commodities as determined by the Secretary. Corn, grain sorghum, wheat, and barley are included whether harvested as whole grain or other than whole grain.

Financing statement means the appropriate document that gives legal notice of a security interest in personal property when properly filed or recorded.

FSA means the Farm Service Agency of the USDA.

FSFL means Farm Storage Facility Loan.

FSFL microloan means a loan for which the producer's aggregate outstanding FSFL balance will be equal to or less than $50,000 at the time of loan application and disbursement.

Hay means a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers.

NAP means the Noninsured Crop Disaster Assistance Program.

NEPA means the National Environmental Policy Act.

NIFA means the National Institute of Food and Agriculture of the USDA.

Non-movable or non-salable collateral means either collateral the county committee determines cannot be sold and moved to a new location because of

the type of construction involved or because the collateral has deteriorated to the point that it has no sale recovery value.

Off-farm paid labor means any laborer that does not work for the applicant on a regular basis and who is not hired as a seasonal worker.

OSHA means the Occupational Safety and Health Administration of the U.S. Department of Labor.

Portable equipment and storage structures means non-affixed equipment and storage containers that are manufactured to be mounted, hitched, or transported with a farm vehicle, truck, or trailer and its primary function is to store or handle eligible facility loan commodities at different farm, market, or storage locations. Examples of portable equipment include, but are not limited to, bulk tanks, conveyors, augers, scales, vacuums, pilers, scales, batch dryers, and storage containers.

Renewable biomass means any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees (excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

Resale collateral value means collateral that can be sold and moved to a new location for which compensation equal to the outstanding loan value can be expected.

Satisfactory credit history means a history of repaying debts as they came due unless the failure to repay or tardiness in payment was due to circumstance beyond the applicant's control as determined by CCC upon proof submitted by the applicant.

Severance agreement means an agreement under which a party may consent to the security interest of another in property thereby allowing the severance of a fixture from the real estate.

Storage and handling truck means a CCC-approved commodity storage truck or van designed to carry eligible commodities and may be equipped with a variety of mechanical refrigeration systems and will be used to store, handle, and move eligible commodities from the producer's farm location to market or storage.

Subordination agreement means any agreement under which a party may subordinate a security interest in property to the interest of another party.

USDA means the United States Department of Agriculture.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

EDITORIAL NOTE: At 81 FR 25592, Apr. 29, 2016, §1436.3 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 1436.4 Application for loans.

(a) An application for an FSFL must be submitted to the administrative FSA county office that maintains the records of the farm or farms to which the applicant applies. If some or all of the land does not have farm records established, the application may be submitted to the FSA county office that services the county where the FSFL financed equipment or facility will be primarily located.

(b) Upon request, the applicant must furnish information and documents as the State or county committee deems reasonably necessary to support the application. This may include financial statements, receipts, bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of access.

(c) For sugar storage facility loans, a loan application must be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications must be submitted to the county office serving the headquarters location of the sugar processor.

(d) Submitting an application does not ensure loan approval nor create any liability on behalf of CCC. Borrowers who authorize delivery, site preparation, or construction actions without an approved loan, do so at their own risk.

(e) The application must include documentation of the need for storage, or for FSFL microloans self-certification, as specified in §1436.9.

[74 FR 41587, Aug. 18, 2009, as amended at 81 FR 25593, Apr. 29, 2016]

§1436.5 Eligible borrowers.

(a) *Borrower* means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

(1) Has a satisfactory credit history according to the definition in §1436.3 and as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(2) Demonstrates an ability to repay the debt arising under this program using a financial statement acceptable to CCC prepared within 90 days of the date of application, as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(3) Has no disqualifying delinquent Federal debt under the Debt Collection Improvement Act of 1996;

(4) Is a producer of a facility loan commodity as determined by CCC;

(5) Demonstrates a need for increased storage capacity as determined by CCC if the applicant is applying for a loan for a storage structure. The Deputy Administrator, Farm Programs, may issue a waiver, if requested, on a case by case basis if a crop share landlord or tenant requests to construct a structure to store commodities produced on the farm but only one of the two wishes to accept loan liability;

(6) Annually provides proof of crop insurance offered under the Federal Crop Insurance Program for insurable crops of economic significance on all farms operated by the borrower in the county where the storage facility is located. Crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not; crop insurance under the Federal Crop Insurance Program may not be available for certain renewable biomass commodities;

(7) Is in compliance with the U.S. Department of Agriculture (USDA) provisions for highly erodible land and wetlands conservation provisions according to 7 CFR part 12;

(8) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;

(9) Annually provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and annually provides proof that the structures for which the loan is made has all peril structural insurance;

(10) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR parts 1500–1508; and

(11) Has not been convicted under Federal or State law of a disqualifying controlled substance violation or a crop insurance violation under 7 CFR part 718.

(b) For sugar facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

[66 FR 4612, Jan. 18, 2001; 66 FR 17073, Mar. 29, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41588, Aug. 18, 2008]

§1436.6 Eligible storage or handling equipment.

(a) All eligible storage and handling facilities must be one of the following types:

(1) Conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least the entire term of the loan;

(2) Oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using original manufacturer's rebuild kits or kits from a supplier approved by the Deputy Administrator, Farm Programs, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and with a useful life of at least the entire term of the loan;

(3) Flat-type storage structures including a permanent concrete floor, designed for and primarily used to store facility loan commodities for the term of the loan and having a useful life of at least the entire term of the loan;

(4) Structures that are bunker-type, horizontal, or open silo structures designed for whole grain storage or other than whole grain storage and having a useful life of at least the entire term of the loan;

(5) Structures suitable for storing hay that are built according to acceptable design guidelines from the National Institute of Food and Agriculture (NIFA) or land-grant universities and with a useful life of at least the entire term of the loan;

(6) Structures suitable for storing renewable biomass that are built according to acceptable industry guidelines and with a useful life of at least the entire term of the loan; or

(7) Bulk storage tanks, as approved by the Deputy Administrator, suitable for storing any eligible loan commodity, as determined appropriate by county committees and having a useful life of at least the entire term of the loan.

(b) For all eligible facility loan commodities, except sugar, the calculation of the loan amount may include costs associated with building, improving, or renovating an eligible storage or handling facility, including:

(1) Drying and handling equipment, including perforated floors determined by the FSA approving committee to be needed and essential to the proper functioning of the storage system;

(2) Safety equipment as required by CCC and meeting OSHA requirements such as lighting, and inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored eligible facility loan commodity, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the eligible facility loan commodity storage and handling equipment;

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the eligible facility loan commodity storage and handling equipment; and

(6) Flooring appropriate for storing hay and renewable biomass suitable for the region where the facility is located and designed according to acceptable guidelines from NIFA or land-grant universities.

(c) For all eligible facility loan commodities, except sugar, no loans will be made for installation or related costs of:

(1) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(2) Structures that are not suitable for storing the facility loan commodities for which a need is determined; or

(3) Storage structures to be used as a commercial facility. Any facility that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation.

(d) Loans for all eligible facility loan commodities, except sugar, may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least the entire term of the loan if the county committee determines there is a need for the capacity of the structure, but loans will not be approved solely for the replacement of worn out items such as motors, fans, or wiring.

(e) Loans for all eligible facility loan commodities, except sugar, may be approved for facilities provided the completed facility has a useful life of at least the entire term of the loan. The pre-owned facility must be purchased and moved to a new location. Eligible items for such a loan include costs such as bin rings or roof panels needed to make a purchased pre-owned structure useable, aeration systems, site preparation, construction off-farm paid labor cost, foundation material and off-farm paid labor. Ineligible items for such a loan include the cost of purchasing and moving the used structure.

(f) The provisions of this paragraph apply only to sugar storage facility loans.

(1) The loan amount may include costs associated with the purchase, installation, building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) Conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) Flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) Storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the sugar storage and handling equipment.

(2) Sugar storage facility, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

(3) No sugar storage facility loans will be made for:

(i) Structures of a temporary natures that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(ii) Structures that are not suitable for storing raw or refined sugar; or

(iii) Weigh scales.

(g) The provisions of this paragraph apply only to cold storage facility loans.

(1) For cold storage facility loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling, or renovating an eligible storage or handling facility. Costs associated with the construction of a cold storage facility include, but are not limited to, the following: An insulated cement slab floor, insulation for walls and ceiling (including, but not limited to, loose fill cellulose, foam insulation sheets, sprayed-on and foam-in-place materials), and a vapor barrier.

(2) Eligible facilities include, but are not limited to, the following:

(i) A cold storage facility of wood pole and post construction, steel, or concrete, that is suitable for storing cold storage commodities produced by the borrower and having a useful life of at least the entire term of the loan;

(ii) Walk-in prefabricated cold storage coolers that are suitable for storing the producer's cold storage commodities and having a useful life of at least the entire term of the loan;

(iii) Equipment necessary for a cold storage facility such as refrigeration units or system and circulation fans;

(iv) Equipment to maintain or monitor the quality of commodities stored in a cold storage facility;

(v) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of a cold storage facility.

(3) FSFLs may be approved for financing additions or modifications to an existing storage facility having an expected useful life of at least the entire term of the loan if CCC determines there is a need for the capacity of the cold storage facility.

(4) FSFLs will not be made for structures or equipment that are not suitable for facility loan commodities that require cold storage.

(h) Storage and handling trucks for facility loan commodities are authorized according to guidelines established by the Deputy Administrator. Storage and handling trucks may include, but are not limited to, cold storage reefer

trucks, grain haulers, and may also include storage trucks with a chassis unit. The Deputy Administrator, Farm Programs, or a State Committee may rescind this provision on a Statewide basis if it is determined that allowing loans for storage and handling trucks has increased loan defaults and is not in the best interest of CCC.

(i) The loan collateral must be used for the purpose for which it was delivered, erected, constructed, assembled, or installed for the entire term of the loan.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41588, Aug. 18, 2009; 76 FR 4805, Jan. 27, 2011; 81 FR 25593, Apr. 29, 2016]

§ 1436.7 Loan term.

(a) For eligible facility loan commodities other than sugar, the term of the loan will not exceed 12 years, based on the total loan principal and loan request type, from the date a promissory note and security agreement is completed on both the partial and final loan disbursement. As determined by the Deputy Administrator, used equipment FSFLs may have a loan term of 3 or 5 years. The applicant will choose a loan term, based on the loan request type at the time of submitting the loan application and total cost estimates. Available loan terms are 3, 5, 7, 10, or 12 years; available terms for a specific loan will be based on the loan principal and facility or equipment type.

(b) The Deputy Administrator has the discretion and authority to extend loan terms for 1 or 2 years, on a case by case basis. Loan term extensions will only be granted after a written request is received from the producer before loan term expires and when determined appropriate by Deputy Administrator to assist borrowers with additional loan servicing options. Producers and participants who have already agreed to the loan term (maturity date) have no right to an extension of the loan term. The borrower agrees to the loan term through the Promissory Note at the time of distribution. The Deputy Administrator's refusal to exercise discretion to consider an extension will not be considered an adverse decision or a failure to act under any law or regulation and, therefore, is not appealable. Participants are not entitled to extensions or the consideration of a request for extension.

(c) For a sugar-related loan:

(1) CCC, at its discretion, may authorize a maximum loan term of 15 years. The minimum loan term of a sugar-related loan is 7 years.

(2) The loan balance and costs are due at the end of the loan term, which will be established on the date the promissory note and security agreement is executed.

[74 FR 41589, Aug. 18, 2009, as amended at 81 FR 25594, Apr. 29, 2016]

§ 1436.8 Security for loan.

(a) Except as agreed to by CCC, all loans must be secured by a promissory note and security agreement covering the facility and such other assurances as CCC may demand, subject to the following:

(1) The promissory note and security agreement must grant CCC a security interest in the collateral and must be perfected in the manner specified in the laws of the State where the collateral is located.

(2) CCC's security interest in the collateral must be the sole security interest in such collateral except for prior liens on the underlying real estate that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the real estate will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the facility after the loan is approved unless CCC approves otherwise in writing.

(3) CCC will hold title in accordance to applicable State laws and motor vehicle administration title provisions, to all eligible equipment, structures, components and storage and handling trucks acquired using loan proceeds under this part.

(b) For loan amounts equal to or less than $100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than $100,000, CCC will not require a severance agreement from the holder of any prior lien on the real estate parcel on which the facility

is located. However, the Deputy Administrator, Farm Programs, or a State Committee may, at their discretion, require a severance agreement for loan amounts greater than $50,000 or less than $100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. If no severance agreement is provided, then the borrower must:

(1) Agree to increase the down payment on the facility loan from 15 percent to 20 percent, except for an FSFL microloan; or

(2) Provides other security such as an irrevocable letter of credit or other form of security approved by CCC.

(c) For loan amounts equal to or less than $100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than $100,000, CCC will not require a lien on the real estate parcel on which the facility is located. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, require a lien in the form of a real estate mortgage, deed of trust, or other security instrument approved by USDA's Office of the General Counsel for loans greater than $50,000 or less than $100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. Liens are required for all loans greater than $100,000. All liens must meet the following conditions:

(1) CCC's interest in the real estate must be superior to all other liens, except a loan may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders; and

(2) The real estate security for the loan must be at least equal to the loan amount; and

(3) If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA's Office of the General Counsel. CCC will not require such an agreement from any agency of USDA.

(d) Title insurance or a title opinion is required for loans secured by real estate.

(e) Real estate liens, with prior CCC approval, may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage and the acreage is not subject to any other liens or mortgages that are superior to CCC's lien interest and

(2) The acreage is of adequate size and value at the time of the application as determined by the county committee to adequately secure and insure repayment of the loan.

(f) A borrower, in lieu of such liens required by this section, may provide an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(g) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest will include the remodeled addition as well as the existing storage structure.

(h) For all farm storage facility loans, except sugar loans, the borrower must pay the cost of loan closings by attorneys, title opinions, title insurance, title searches, filing, and recording all real estate liens, fixture filings, appraisals if requested by the borrower, and all subordinations. CCC will pay costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(i) For loan amounts equal to or less than $100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than $100,000, and secured by collateral without any resale value, as determined by CCC, additional security will not be required. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, for all FSFLs in the State, require additional security for loan amounts greater than $50,000 or less than $100,000 that are secured by collateral without any resale value if deemed necessary to protect the interests of the CCC.

(j) For sugar storage facility loans, in addition to other requirements in this section, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if deemed necessary by CCC to adequately secure the loan.

A sugar storage facility loan will generally be considered to be adequately secured when the CCC-determined value of security for the loan is equal to at least 125 percent of the loan amount.

(k) For sugar storage facility loans, paragraph (h) of this section is not applicable. However, the borrower must pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, and filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

[74 FR 41589, Aug. 18, 2009, as amended at 79 FR 13192, Mar. 10, 2014; 81 FR 25594, Apr. 29, 2016]

§ 1436.9 Loan amount and loan application approvals.

(a) The cost on which the loan will be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel, -ton or, -cubic foot cost established by the FSA State committee.

(b) The net cost for all facilities:

(1) May include the following: All real estate lien related fees paid by the borrower, including attorney fees, except for filing fees; environmental and historic review fees including archaeological study fees; the facility purchase price; sales tax; shipping; delivery charges; site preparation costs; installation cost; material and labor for concrete pads and foundations; material and labor for electrical wiring; electrical motors; off-farm paid labor; on-farm site preparation and construction equipment costs not to exceed commercial rates approved by the county committee; and recently required on-farm material approved by the county committee.

(2) May not include secondhand material or any other item determined by the approving authority to be ineligible for loan.

(c) The maximum total principal amount of the FSFL, except for FSFL microloans, is 85 percent of the net cost of the applicant's needed facility, not to exceed $500,000 per loan. For FSFL microloans the maximum total principal amount of the farm storage facility loan is 95 percent of the net costs of the applicant's needed storage, handling facility, including drying and handling equipment, or storage and handling trucks, not to exceed an aggregate outstanding balance of $50,000.

(d) The storage need requirement for eligible facility loan commodities will be determined as follows:

(1) For facility loan commodities, except sugar, cold storage commodities, maple sap, and milk:

(i) Multiply the average of the applicant's share of the acres farmed for the most recent three years for each type of facility loan commodity requiring suitable storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Multiply by two (for 2 years production); and

(iv) Subtract existing storage capacity in the units of measurement, such as bushels, tons, or cubic feet, for the type of storage needed to determine remaining storage need.

(v) Compare capacity of proposed facility with storage need (calculated as specified in paragraphs (d)(1)(i)–(iv) of this section) to determine if applicant is eligible for additional storage.

(2) For sugar storage facility loans,

(i) Identify past processing volume and marketing allotments;

(ii) Use the processor's projection of processing volume, available storage capacity, volume not to be marketed due to marketing allotment, and other appropriate factors affecting the processor's storage need to estimate the storage need requirement, and

(iii) Compare capacity of proposed facility with storage need (estimated as specified in paragraphs (d)(2)(i)–(ii) of this section) to determine if additional storage is required.

(3) For cold storage facilities:

(i) Multiply the average of the applicant's share of production or of acres farmed for the most recent 3 years for each eligible commodity requiring cold storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Determine cold storage needed (calculated as specified in paragraphs (d)(3)(i)–(ii) of this section) with the assistance of NIFA, land-grant university, or ARS publications; and

(iv) Subtract existing cold storage capacity to determine remaining storage need.

(v) Compare capacity of proposed cold storage facility with cold storage need (calculated as specified in paragraphs (d)(3)(i)–(iv) of this section) to determine if applicant is eligible for additional cold storage.

(4) For all eligible facility loan commodities, except sugar, if acreage data is not practicable or available for State and County Committees or authorized FSA staff to determine the storage need, specifically, but not limited to, maple sap, eggs, butter, cheese, yogurt, milk, meat and poultry, a reasonable production yield, such as ERS or NASS data may be used to determine the storage capacity need. A reasonable production yield may also be used for newly acquired farms, specialty farming, changes in cropping operations, prevented planted acres, or for facility loan commodities being grown for the first time.

(5) For FSFL microloans if the FSA State and county committees determine that self-certification is practicable based on the applicant's farm operation, then CCC may allow applicants to self-certify to the storage capacity need. The Deputy Administrator, Farm Programs, or an FSA State committee may rescind the FSFL microloan provision on a Statewide basis if it is determined that allowing FSFL microloans has increased the likelihood of loan defaults and is not in the best interest of CCC.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan will be prorated. Only costs associated with the applicant's needed storage capacity will be considered eligible for loan under this part.

(f) Any borrower with an outstanding loan must use the financed structure only for the storage of eligible facility loan commodities. If a borrower uses such structure for other purposes such as office space or display area, the loan amount will be adjusted for the ineligible space as determined by CCC.

(g) The FSA county committee may approve applications, if loan funds are available, up to the maximum approval amount unless the Deputy Administrator, Farm Programs, or the FSA State committee establishes a lower limit for county committee approval authority.

(h) The Farm storage facility loan approval period, which is the timeframe, from approval until expiration, during which the facility must be completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility for all eligible facility loan commodities except sugar, will expire 6 months after the date of approval unless extended in writing for an additional 6 months by the FSA State Committee. A second 6 month extension, for a total of 18 months from the original approval date, may be approved by the FSA State Committee. This authority will not be re-delegated. Sugar storage facility loan approvals will expire 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) For sugar storage facility loans, paragraphs (c) and (g) of this section do not apply.

(j) For sugar storage facility loans, the agency approval officials may only approve loans, subject to available funds.

[74 FR 41590, Aug. 18, 2009, as amended at 76 FR 4805, Jan. 27, 2011; 81 FR 25595, Apr. 29, 2016]

§ 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the facility and the amount of the loan determined in accordance with § 1436.9 will be made by the loan applicant to the supplier or contractor before either the partial or final loan disbursements.

(b) The down payment must be in cash unless some other form of payment is approved by CCC. The down payment may be obtained by the borrower from another lending source.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

(d) The minimum down payment for an FSFL will be 5 percent for an FSFL microloan and 15 percent for all other FSFLs, with the down payment to be calculated as a percentage of net cost as specified in §1436.9. As specified in §1436.8, a larger down payment may be required to meet security requirements.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41590, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

§1436.11 Disbursements and assignments.

(a) At the request of the borrower, one partial disbursement of loan principal and one final loan disbursement will be available. The partial loan disbursement will be made to facilitate the purchase and construction of an eligible facility and will be made after the approved applicant has completed construction on part of the structure. County FSA personnel will inspect and verify the amount of construction completed.

(1) The amount of the partial loan disbursement will be determined by CCC and made after the borrower provides acceptable documentation for that portion of the completed construction to the County Committee.

(2) Security required for the amount of the partial loan disbursement will be required before the partial loan disbursement is finalized.

(3) The final disbursement of the loan by CCC will be made after the facility has been completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(4) All additional security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

(b) Both the partial and final loan disbursements will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan. If deemed appropriate by CCC, the partial and final disbursement may have separate notes and separate security instruments.

(c) Both the partial and final loan disbursement will be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower solely where CCC determines, based upon information made available to CCC by the borrower, that the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility and that all applicable liens, security interests, or other encumbrances have been released.

(d) A release of liability will be required from all contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

(f) For sugar storage facility loans, only one disbursement will be made and such disbursement will be regarded as a final disbursement.

[74 FR 41591, Aug. 18, 2009, as amended at 81 FR 25595, Apr. 29, 2016]

§1436.12 Interest and fees.

(a) Loans will bear interest at the rate equivalent, as determined by CCC, to the rate of interest charged on Treasury securities of comparable term and maturity on the date the loan is initially approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) Each borrower on a loan application must pay a non-refundable application fee in such amount determined appropriate by CCC; the fee will be not less than $100 per borrower. The loan application fee is determined based on the cost of the fees associated with the loan, including, but not limited to, the cost to CCC for lien searches, security filings, and credit reports.

(d) For sugar storage facility loans, paragraph (c) of this section does not apply.

[73 FR 41591, Aug. 18, 2009]

§ 1436.13 Loan installments, delinquency, and acceleration of maturity date.

(a) Equal installments of principal plus interest will be amortized over the loan term for purposes of setting a payment schedule. Installments are due and payable not later than the last day of each 12-month period of each of the partial and final loan disbursements, until the principal plus interest has been paid in full.

(b) Each installment may be paid in cash, money order, wire transfer, or by personal, certified, or cashier's check. Each payment will be applied first to accrued interest and then to principal.

(c) When installments are not paid on the due date:

(1) CCC will generally mail a demand for payment to the debtor after the due date has passed.

(2) If the installment is not paid within 30 calendar days of the due date or if a new due date acceptable to CCC has not been established based on a financial plan submitted by the debtor, CCC may send two subsequent written demands at approximately 30 calendar day intervals unless CCC needs to take other action to protect the interests of CCC.

(3) If the debtor files an appeal according to §1436.18, CCC will generally cease collection action until the appeal process is complete, however, CCC may withhold any payments due the debtor and, depending on the outcome of the appeal, any payments due the debtor may later be offset and applied to reduce the indebtedness.

(4) In lieu of a foreclosure on the collateral or the land securing a loan in the case of a delinquency, CCC may permit a rescheduling of the debt or other measures consistent with the collection of other debts under the provisions of part 1403 of this chapter. Any rescheduling or alternate repayment arrangements will be permitted only with prior approval from the Deputy Administrator, Farm Programs. Alternately, CCC may implement such other collection procedures as it deems appropriate.

(d) A claim will be established against a borrower for any amounts remaining due after liquidation of the loan.

(e) CCC may declare the entire indebtedness immediately due and payable if the borrower violates any of the terms and conditions of this part, fails to pay any installment on time, or breaches any of the terms and conditions of any of the instruments executed in connection with the loan, or if , during the life of the loan, the collateral is used in connection with or by any unauthorized commercial facility including, but not limited to, elevators, warehouses, dryers, processing plants, or retail or wholesale cold storage facilities.

(f) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity that the borrower participates in, either directly or indirectly, as determined by CCC.

(2) Against related persons or entities, irrespective of the debtor's, share, when CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the debt.

(g) The loan may be paid in full or in part without penalty at any time before maturity.

(h) Upon payment of a loan, CCC will release CCC's security interest in the collateral.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]

§ 1436.14 Taxes.

The borrower must pay, when due, all real and personal property taxes that may affect CCC's security interest in all collateral or land securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral or land securing a loan made in accordance with this part, and if CCC does so, the borrower will reimburse CCC for such payment, and if unpaid by the borrower, such debt will become due immediately.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]

§ 1436.15 Maintenance, liability, insurance, and inspections.

(a) The borrower must maintain the loan collateral in a condition suitable for the storage or handling of one or more of the facility loan commodities.

(b) Until the loan has been repaid, the borrower will be liable for all damages to or destruction of the collateral. CCC will not assume any loss of the collateral.

(c) CCC may conduct annual collateral inspections to insure compliance with this part. The borrower must consent to such inspection as a term of the loan and failure to supply such access will put the borrower into default.

(d) Facilities must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC will have rights to enter, leave, and return to the property where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made will constitute a loan default for which the remaining balance of the loan will become immediately due and payable.

(f) For sugar storage facility loans, in addition to the requirements of paragraph (d) of this section, sugar processors must also insure the contents of storage structures used as collateral for a sugar storage facility loan against all perils.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002; 74 FR 41591, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016; 82 FR 16101, Apr. 3, 2016]

§ 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or bankruptcy.

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and payable under this part as follows:

(1) If a demand for payment is not received by the due date acceptable to CCC, CCC may call the loan and initiate foreclosure proceedings by issuing a liquidation letter to the borrower.

(2) The debtor may voluntarily agree to allow removal of the collateral to facilitate sale by signing an agreement for sale. If the debtor objects to removal of collateral, the law of the State where the collateral exists will be used to foreclose on the property.

(3) For loans with movable collateral and no real estate lien, CCC may sell the collateral for the best price obtainable. Sales proceeds will be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral.

(ii) Payment to junior lien holders if approved by USDA's Office of the General Counsel and then to the borrower or other persons as determined appropriate by that office.

(4) For loans with non-movable or non-salable collateral, as determined by CCC, and no real estate lien, CCC may establish a claim according to 7 CFR part 1403.

(5) For loans secured with a real estate lien, CCC may obtain an appraisal of the property. Sales proceeds will be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral and the appraisal.

(ii) To junior lien holders if approved by USDA's Office of the General Counsel; or

(iii) To the borrower or other persons as determined appropriate by that office.

(b) Assumption by another borrower of a farm storage facility loan is permitted subject to county committee approval and the subsequent borrower's ability to show a satisfactory credit history. An assumption of the loan may be approved when the collateral is sold by CCC to an otherwise eligible borrower, the current borrower will convey the collateral or property securing the loan to another eligible borrower, or the borrower is dead, incompetent, or missing and an eligible borrower wants to assume the loan.

(1) Requests for approval of assumptions must be made to the county committee by the borrower, the borrower's

successors, or representatives of the borrower. If approval is granted, the borrower's successors or representatives must execute a new farm storage facility note and security agreement for the balance of the term of the loan.

(2) The principal amount of the loan will include the unpaid amount of the loan, interest computed to the date of assumption, all past due installments, and any other charges that may be required.

(c) The borrower may voluntarily convey the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities securing a loan without repaying the loan in full, the borrower must obtain approval for the sale or conveyance from the FSA county committee with the understanding that sale proceeds must be paid to satisfy the borrower's indebtedness to CCC.

(d) If any significant changes are made to the legal or operating status of the farming operation with an outstanding Farm Storage Facility Loan, the borrower must do one of the following:

(1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,

(2) Repay the loan, or

(3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC's interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

(e) Remedies provided for in this section will, unless CCC determines otherwise, be subject to the administrative appeals provided for elsewhere in this part, including those that are found at §1436.13.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

§1436.18 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except for provisions for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with parts 11 and 780 of this title.

§1436.19 Equal Opportunity and Nondiscrimination requirements.

(a) No recipient of a Storage Facility loan will directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. FSFL borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act. FSFL is subject to the nondiscrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.

[67 FR 54939, Aug. 26, 2002. Redesignated at 67 FR 65690, Oct. 28, 2002; 74 FR 41592, Aug. 18, 2009]

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

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AUTHORITY: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

SOURCE: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 1437.1 Applicability.

(a) The purpose of the Noninsured Crop Disaster Assistance Program (NAP) is to help manage and reduce production risks faced by producers of eligible commercial crops or other agricultural commodities during a coverage period. NAP reduces financial losses that occur when natural disasters (damaging weather or adverse natural occurrence that is an eligible cause of loss) cause a loss of expected production or actual value for value loss crops, or where producers are prevented from planting an eligible crop because of an eligible cause of loss in a coverage period.

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic risk protection is not available under subsection (b) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) and additional coverage under subsections (c) and (h) of section 508 or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance.

(c) The regulations in this part are applicable to the 2019 and subsequent crop years.

[79 FR 74571, Dec. 15, 2014, as amended at 85 FR 12218, Mar. 2, 2020]

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Administrator, Farm Service Agency (FSA) (who also serves as the Commodity Credit Corporation (CCC) Executive Vice President), and the Deputy Administrator for Farm Programs, FSA, (referred to as ''Deputy Administrator'' in this part). NAP is carried out by FSA State and county committees

(State and county committees) with instructions issued by the Deputy Administrator.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this part, NAP's basic provisions, or instructions issued by the Deputy Administrator.

(c) The State committee will take any action required by the regulations in this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations in this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation to a State or county committee precludes the FSA Administrator, the Deputy Administrator, or a designee, from determining any question arising under NAP or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of NAP.

(1) Producers and participants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to consider such a request or a decision not to exercise this discretionary authority under this section is not an adverse decision and is not appealable.

(2) FSA's decision not to consider a case under this section is not a failure to act under any law or regulation because participants have no right to a decision on a request for waiver or modification.

(f) Items including, but not limited to, application periods, application deadlines, basic provisions, internal operating guidelines issued to FSA State and county offices, coverage periods, fees, prices, yields, and payment factors established for NAP in accordance with this part that are used for similarly situated participants and eligible crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

(g) Where there is any conflict between the basic provisions and the regulations, the regulations apply except when the Deputy Administrator determines that because of the timing of issuance of the regulations, the basic provisions applicable to the specific crop year or coverage period that may be less restrictive will apply.

[79 FR 74571, Dec. 15, 2014]

§ 1437.3 Definitions.

The terms and definitions in this section apply to NAP. The terms and definitions in part 718 of this title and part 1400 of this chapter also apply to NAP, except where those same terms are defined in this section. In that case, the terms and definitions of this section apply.

Abandoned means to have discontinued care for a crop or provided care so insignificant as to provide no benefit to the crop, or failed to harvest in a timely manner.

Acres devoted to the eligible crop means the total planted and considered planted (P&CP) acres of the eligible crop.

Additional coverage means insurance coverage offered by the Federal Crop Insurance Corporation under sections 508(c) or 508(h) of the Federal Crop Insurance Act.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

Agricultural experts means persons who are employed by the National Institute of Food and Agriculture, or the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Animal Unit Days (AUD) means an expression of expected or actual stocking rate for pasture or forage.

Application closing date means the last date, as determined by FSA, producers can submit an application for coverage for noninsured crops for the specified crop year and coverage period.

Application for coverage means:

(1) The form specified by FSA to be completed by a producer applying for NAP coverage for an eligible crop that is accompanied by the service fee or the service fee waiver form, or

(2) Another applicable form, designated by the Deputy Administrator to qualify as an application for NAP, that the producer has on file with FSA before the deadline for application for the coverage period which certifies they are eligible for a service fee waiver.

Basic provisions means the document summarizing the terms and conditions of NAP coverage for a crop year that are acknowledged as having been received by the person or legal entity who signs an application for coverage according to this part.

Buffer zone means a parcel of land, as designated in an organic system plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices and is used to minimize the possibility of unintended contact by prohibited substances or organisms.

Buy-up coverage means NAP assistance that is available for all eligible NAP covered crops (other than for crops and grasses intended for grazing) at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Buy-up coverage yield means not less than 50 percent nor greater than 65 percent of the approved yield for the crop, as elected by the NAP covered participant and specified in 5-percent increments.

Bypass year means a year that the producer did not obtain NAP coverage for the crop and did not file a report of acreage or production, or obtained NAP coverage for the crop and had reported or determined zero acres devoted to the eligible crop.

Catastrophic coverage means:

(1) For insured crops, the coverage offered by the Federal Crop Insurance Corporation (FCIC) under section 508(b) of the Federal Crop Insurance Act.

(2) For eligible NAP crops, coverage at the following levels due to an eligible cause of loss impacting the NAP covered crop during the coverage period:

(i) Prevented planting in excess of 35 percent of the intended acres;

(ii) A yield loss in excess of 50 percent of the approved yield;

(iii) A value loss in excess of 50 percent; or

(iv) An animal-unit-days (AUD) loss greater than 50 percent of expected AUD.

Certified organic acreage means acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards specified in part 205 of this title.

Certifying agent means a private or governmental entity accredited by the United States Department of Agriculture (USDA) Secretary for the purpose of certifying a production, processing or handling operation as organic.

Conventional farming practice means any good farming practice that is not an organic farming practice.

Crop year means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage or buy-up coverage is available, the crop year will be as defined by such coverage.

Feedstock means a crop including, but not limited to, grasses or legumes, algae, cotton, peanuts, coarse grains, small grains, oil seeds, or short rotation woody crops, that is grown expressly for the purpose of producing a biobased material or product, and does not include residues and by-products of crops grown for any other purpose.

Fiber means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by FSA.

Final planting date means the date which marks the end of the planting period for the crop and in particular the last day, as determined by FSA, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

Food means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by FSA.

Generally recognized means when agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

Good farming practices means the cultural practices generally recognized as compatible with agronomic and weather conditions and used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield, as determined by FSA. These practices are:

(1) For conventional farming practices, those generally recognized by agricultural experts for the area, which could include one or more counties; or

(2) For organic farming practices, those generally recognized by the organic agricultural experts for the area or contained in the organic system plan that is in accordance with the National Organic Program specified in part 205 of this title.

Guarantee means the level of coverage provided based on the application for coverage and buy-up coverage elected under the provisions of this part.

Hand-harvested crop means a non-forage crop that is not harvested mechanically and is removed from a field by hand.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

Hemp means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis.

Hemp processor means any business enterprise regularly engaged in processing hemp that possesses all licenses and permits for processing hemp required by the applicable state or Federal governing authority, and that possesses facilities, or has contractual access to such facilities with enough equipment to accept and process contracted hemp within a reasonable amount of time after harvest.

Hemp processor contract means a legal written agreement executed between the producer and hemp processor engaged in the production and processing of hemp containing at a minimum:

(1) The producer's promise to plant and grow hemp and to deliver all hemp to the hemp processor;

(2) The hemp processor's promise to purchase the hemp produced by the producer; and

(3) A base contract price, or method to derive a value that will be paid to the producer for the production as specified in the processor's contract.

(4) For a producer who is also a hemp processor, a corporate resolution by the Board of Directors or officers of the hemp processor will be considered a hemp processor contract if it contains the required terms listed in this definition.

Industrial crop means a commercial crop, or other agricultural commodity used in manufacturing or grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products. Industrial crops include castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella,

meadowfoam, milkweed, plantago ovato, sesame, and other crops specifically designated by FSA. Industrial crops exclude any plant that FSA has determined to be either a noxious weed or an invasive species. A list of plants that are noxious weeds and invasive species will be available in the FSA county office.

Maximum dollar value for coverage sought means the total dollar amount elected by the NAP covered participant for which buy-up coverage may be considered for a value loss crop in a coverage period. The amount is set by the NAP covered participant for each value loss crop and represents the highest amount of field market value of the crop before disaster in a coverage period.

Multiple planted means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by FSA.

Native sod means land on which the natural state plant cover before tilling was composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing and is land that has never been tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that are provided by a producer and acceptable to FSA).

Normal harvest date means the date harvest of the crop is normally completed in the administrative county, as determined by FSA.

Organic agricultural experts means persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education, or the National Institute of Food and Agriculture, the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific practice for which such expertise is sought.

Organic crop means an agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice means a system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

Organic standards means standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6523) and 7 CFR part 205.

Organic system plan means a plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Organic Foods Production Act and the regulations in 7 CFR part 205, subpart C.

Prohibited substance means any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional, or buffer zone acreage. Lists of such substances are specified in §§ 205.602 and 205.604 of this title.

Secondary use means the harvested production bears little resemblance to, or has a different unit of expression than, the unit of expression for the reported intended use. It does not apply to fresh and processed harvested production; is not salvage; not counted as production of the crop for the following purposes, including, but not limited to:

(1) The determination of whether the unit suffered requisite loss; and

(2) APH and approved yield.

Seed crop means propagation stock commercially produced for sale as seed stock for eligible crops.

Seeded forage means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Short rotation woody crops means fast-growing trees that reach their economically optimum size between 4 and 20 years old.

T-Yield means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

THC means delta-9 tetrahydrocannabinol.

Transitional acreage means acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

Transitional yield means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006; 76 FR 4805, Jan. 27, 2011; 78 FR 21018, Apr. 9, 2013; 79 FR 74572, 74583, Dec. 15, 2014; 85 FR 12218, Mar. 2, 2020; 88 FR 1891, Jan. 11, 2023]

§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available during the coverage period specified in §1437.6 for loss of production or loss of value for value loss crops or prevented planting of eligible commercial crops or other eligible agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by FSA, and is considered timely-planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by FSA, may be planted and remain eligible for reduced NAP coverage; and

(4) Determined by FSA to be eligible crops for which:

(i) Catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b), (c), and (h)) are not available or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance; or

(ii) These specific practices for these crops are not included under the Federal Crop Insurance Act (7 U.S.C. 1508), but only when the Deputy Administrator determines in advance of a coverage period that the specific practice is appropriate for NAP coverage and is not available for coverage under Federal crop insurance.

(iii) The producer applies good farming practices.

(b) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their byproducts;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Sweet sorghum;

(vii) Biomass sorghum;

(viii) Industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products);

(ix) Seed crops, including propagation stock such as non-ornamental seedlings, sets, cuttings, rootstock, and others, as determined by FSA; and

(x) Sea grass and sea oats.

(c) Except as specified in paragraph (e) of this section, paragraph (d) of this section will apply to native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled:

(1) During the first 4 crop years of planting for native sod acreage that has been tilled for the production of an annual crop during the period beginning on February 8, 2014, and ending on December 20, 2018; and

(2) For not more than any 4 crop years for native sod acreage that has been tilled for the production of any crop after December 20, 2018:

(i) During the first 10 crop years after the initial tillage; and

(ii) For which a NAP applicant must submit a service fee or NAP premium for a crop on that acreage.

(d) For acreage specified in paragraph (c) of this section:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in §1437.7, as applicable, but the premium will not exceed the maximum amount specified in §1437.7(d)(2).

(e) If the producer's total native sod acreage that is tilled in a crop year is 5 acres or less, the approved yield, service fee, and premium provisions specified in paragraph (d) of this section will not apply.

(f) Wheat, barley, oats, or triticale crop acreage subject to an application for grazing payments under the program specified in part 1421, subpart D of this chapter, or successor program, is ineligible for NAP payments.

[67 FR 12448, Mar. 19, 2002, as amended at 67 FR 62324, Oct. 7, 2002; 71 FR 13742, Mar. 17, 2006; 78 FR 21018, Apr. 9, 2013; 79 FR 74573, 74583, Dec. 15, 2014; 85 FR 12218, Mar. 2, 2020]

§1437.5 Coverage levels.

(a) NAP coverage for prevented planting is provided for approved prevented planting of an eligible NAP covered crop due to an eligible cause of loss in the coverage period. Payment is based on the approved prevented planted acreage in excess of 35 percent of the total intended acres to be planted.

(b) Except as provided in paragraph (d) of this section, NAP coverage is equal to 50 percent of the yield or inventory value specified in paragraph (c) of this section at 55 percent of the average market price established by FSA.

(c) Except as provided in paragraph (d) of this section, to be eligible for a NAP payment a producer must have suffered a yield or inventory value loss greater than 50 percent as the result of an eligible cause of loss in the coverage period as follows:

(1) For yield-based crops, a yield loss in excess of 50 percent of the approved yield;

(2) For value loss crops, a loss of value in excess of 50 percent of the total value of eligible inventory at the time of disaster;

(d) Subject to paragraph (e) of this section, producers of eligible NAP crops, other than crops and grasses intended for grazing, may elect buy-up coverage at 100 percent of the average market price in amounts of 50 percent to 65 percent, in 5 percent increments, of:

(1) For yield-based crops, the approved yield; and

(2) For value loss crops, the lesser of the total value of eligible inventory at the time of disaster or the maximum dollar value for coverage sought.

(e) A producer cannot obtain buy-up coverage for a crop if the producer has not successfully produced the crop in a previous year for which documentation exists and that documentation shows that the crop can be successfully grown by the producer in the county. Production of the crop is considered to be successful if the producer produced at least 50 percent of the county expected yield for the same county for which buy-up coverage is sought, unless the producer suffered a loss on the crop due to an eligible cause of loss in §1437.10. If not already provided to FSA for any reason including NAP coverage or assistance, the producer must submit documentation showing successful growing of the crop in a previous year and, in the event a loss due to an eligible cause of loss was sustained, submit documentation of that loss satisfying the requirements of §1437.11.

(f) The quantity or value of any eligible NAP crop will not be reduced for any quality consideration unless a zero value is established based on a total loss of quality, except as specified in §1437.105.

(g) For crop acreage intended to be grazed, to be eligible for a NAP payment, a producer must have suffered a loss of AUD in excess of 50 percent of expected AUD determined on the basis of acreage, carrying capacity, and grazing period.

[79 FR 74574, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020]

§1437.6 Coverage period.

(a) *Coverage period.* The coverage period is the time during which coverage is available against prevented planting,

a loss of production, or loss of value, as applicable, of the eligible crop as a result of an eligible cause of loss specified in §1437.10. Except as provided in paragraph (h) of this section, coverage periods start no earlier than 1 calendar day after date of filing of a valid application for coverage as specified in §1437.7.

(1) If an application for coverage is filed within 30 calendar days of the end of a coverage period, the application for coverage is invalid and will not be processed by FSA. In the event the application for coverage is invalid as discussed in this paragraph, service fees will not be refunded.

(2) Except as provided in paragraph (h) of this section, coverage is never retroactive.

(b) *Annual crops.* Except as provided in paragraph (h) of this section, the coverage period for annual crops, including annual forage crops,

(1) Begins the later of:

(i) 1 calendar day after the date the application for coverage is filed; or

(ii) The date the crop is planted, not to exceed the late planting period; and

(2) Ends on the earlier of:

(i) The date harvest is complete;

(ii) The normal harvest date of the crop in the area;

(iii) The date the crop is abandoned; or

(iv) The date the crop is destroyed.

(c) *Biennial and perennial crops.* Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends as determined by FSA.

(d) *Value loss crops.* Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including floriculture and mushrooms begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends the last day of the crop year, as determined by FSA.

(e) *Honey.* Except as provided in paragraph (h) of this section, the coverage period for honey begins the later of 1 calendar day after the date of the application for coverage is filed; 1 calendar day after the application closing date; or the date the colonies are set in place for honey production. The coverage ends the last day of the crop year.

(f) *Maple sap.* Except as provided in paragraph (h) of this section, the coverage period for maple sap begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends on the earlier of the date harvest is complete; or the normal harvest date.

(g) *Biennial and perennial forage crops.* Except as provided in paragraph (h) of this section, for biennial and perennial forage crops the coverage period begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date; for first year seedings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.

(h) *2019 and 2020 crop years.* For the 2019 and 2020 crop years only, if a crop's application closing date is before April 8, 2019, the coverage period of the crop will be as specified in paragraphs (a) through (g) of this section except that the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in §1437.7(i). This limited retroactive coverage for the 2019 and 2020 crop years only will begin 1 calendar day after the established application closing date, which would be the same as if they had filed by the deadlines as specified in paragraphs (a) through (g) of this section.

[79 FR 74574, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020; 88 FR 1891, Jan. 11, 2023]

§1437.7 Application for coverage, service fee, premium, transfers of coverage, and acreage report.

(a) Except as provided in paragraph (i) of this section, with respect to each crop, commodity, or acreage, producers

must file an application for coverage under this part by the application closing date.

(b) The service fee or certification of eligibility for a service fee waiver specified in paragraph (g) of this section must accompany the application for coverage in order for it to be considered filed. The service fee is:

(1) For applications filed by April 7, 2019, $250 per crop per administrative county, up to $750 per producer per administrative county, not to exceed $1,875 per producer; and

(2) For applications filed on or after April 8, 2019, $325 per crop per administrative county, up to $825 per producer per administrative county, not to exceed $1,950 per producer.

(c) The service fee will be applied per administrative county by crop and by planting period, as determined by FSA.

(d) Producers who elect buy-up coverage must pay a premium, in addition to the service fee, equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The producer's share of the eligible crop;

(ii) The number of acres devoted to the eligible crop;

(iii) The approved yield;

(iv) The coverage level elected by the producer;

(v) The average market price; and

(vi) A 5.25-percent premium fee.

(e) For value loss crops, premiums will be equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The maximum dollar value for which coverage is sought by the applicant;

(ii) The coverage level elected by the producer; and

(iii) A 5.25-percent premium fee.

(f) Premiums will be calculated separately for each crop, type, and intended use as reported on the acreage report and as specified in the basic provisions.

(g) Beginning farmers and ranchers, limited resource farmers and ranchers, socially disadvantaged farmers or ranchers, and veteran farmers and ranchers will receive, upon certification, a waiver of the service fee and a 50 percent premium reduction for any buy-up coverage elected. The certification is required on or before the time the application for coverage is filed using the form specified by FSA.

(h) Transfers of NAP coverage are governed by the basic provisions.

(i) For the 2019 and 2020 crop years, if a crop's application closing date is before April 8, 2019, FSA will accept applications for coverage without regard to whether or not the application for coverage was filed by the crop's application closing date, provided that the application for coverage includes buy-up coverage according to §1437.5(d) and is filed by May 24, 2019. Except as specifically stated in this rule, the provisions of this paragraph do not apply to crops having an application closing date established on or after April 8, 2019, or to applications for coverage that do not include buy-up coverage as an option selected by the applicant. The coverage period for applications for coverage filed according to this paragraph will be as specified in §1437.6.

(j) An accurate acreage report must be filed for each crop included on an application for coverage by the earliest of:

(1) The acreage reporting date for the crop announced by FSA;

(2) 15 calendar days before the onset of harvest or grazing of the crop acreage being reported; or

(3) The established normal harvest date for the end of the coverage period.

(k) Applications for coverage for hemp are governed by this part.

(l) Applications for coverage that were filed with FSA for all crops other than hemp that were covered under the

regulations in effect at the time of filing and which meet all the other requirements of this section will be recognized by FSA.

[79 FR 74575, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020; 88 FR 1892, Jan. 11, 2023]

§ 1437.8 Records.

(a) Producers must maintain accurate records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with § 1437.7. For those crops or commodities for which it is impractical, as determined by FSA, to maintain crop acreage, yields, or production data, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D, and E of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with § 1437.7. Producers may be selected and be required to provide records acceptable to FSA to support any certification provided. For each harvested crop for which producers file an application for payment in accordance with § 1437.11, producers must provide documentary evidence acceptable to FSA of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year or, for crops with a coverage period of more than 12 months, no later than 60 days after the normal harvest date. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by FSA. Certifications must be accompanied by a record of production; records of production acceptable to FSA may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by FSA; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by FSA.

(3) For quality losses specified in § 1437.105, verifiable records substantiating a quality loss due to an eligible cause of loss in the coverage period. The record submitted must come from tests or analysis substantiating that the loss of quality occurred from an eligible cause of loss during the coverage period. FSA will disapprove quality adjustments under § 1437.105 if FSA determines the evidence does not substantiate a loss of quality occurred due to an eligible cause of loss in the coverage period. For example, if FSA determines the tests or analysis of the specific crop's production were taken too late to determine if the measured loss of quality occurred from an eligible cause of loss in the coverage period (regardless whether a loss of quality was in fact measured or determined), no quality loss adjustment will be made or permitted. There is no presumption that a measured loss of quality occurred due to an eligible cause of loss in the coverage period. It is a NAP covered producer's burden to present evidence, satisfactory to FSA, substantiating that the alleged quality loss occurred to the NAP covered crop in the coverage period.

(b) During any crop year that a notice of loss is filed according to this part:

(1) Producers of hand-harvested or rapidly deteriorating crops, as determined by the Deputy Administrator,

must, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made within 72 hours of when harvest is complete. If an appraisal of the crop acreage is requested by the producer or determined necessary by FSA, the producer must not destroy the crop residue until the crop acreage is released by an FCIC- or FSA-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or FSA loss adjusters of acreage of hand-harvested or rapidly deteriorating crops be completed during non-loss crop years in order to maintain accurate actual production history.

(2) Producers must not allow the gathering (gleaning) of any produce left in the field following normal harvest of the crop acreage until the crop acreage is released by a qualified FSA or FCIC loss adjustor, as determined by FSA. Except, crop acreage may be released by an authorized FSA representative for acceptable gleaning operations, as determined by FSA, when producers and gleaners agree to provide acceptable records, as determined by FSA, of the quantity of the crop gleaned.

(c) Producers must provide acceptable evidence, as determined by FSA, of:

(1) An interest in the commodity produced or control of the crop acreage on which the commodity was grown at the time of disaster;

(2) The authority of the applicable individual to execute program documents;

(3) The producer's risk in the crop; and

(4) The producer's ability and intent to harvest, transport, and market the crop's expected production determined by using the approved yield or inventory of the crop or commodity.

(d) Reports of acreage planted or intended but prevented from being planted must be provided to FSA at the administrative county office for the acreage no later than the date specified by FSA for each crop and location. Reports of acreage filed beyond the date specified by FSA for the crop and location may, however, be processed and used for determining acres devoted to the eligible crop if all the provisions of 7 CFR part 718 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report by the date specified by FSA for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

(1) Number of acres of the eligible crop in the administrative county (for each planting in the event of multiple planting) in which the producer has a share;

(2) Zero acres planted when the producer's crop for which an application for coverage was filed, is not planted;

(3) The producer's share of the eligible crop at the time an application for coverage was filed;

(4) The FSA farm serial number;

(5) The identity of the crop, practices, intended uses, and for forage crops, the predominant species or type and variety of the vegetation;

(6) For organic crops with an average market price established under §1437.12(b), the identity of the crop planted on:

(i) Acreage using conventional farming practices;

(ii) Certified organic acreage;

(iii) Transitional acreage being converted to certified organic acreage;

(iv) Buffer zone acreage;

(7) The identity of all producers sharing in the crop;

(8) The date the crop was planted or planting was completed, including the age of the perennial crops; and

(9) The acreage intended but prevented from being planted.

(e) Producers receiving a guaranteed payment for planted acreage, as opposed to receiving a payment only upon delivery of the production must provide documentation of any written or verbal contract or arrangement with the buyer to FSA. Net production, as determined by FSA, may be adjusted upward by the amount of production corresponding to the amount of the contract payment received.

(f) Producers must provide documentation of any salvage value received by or made available for the

quantity of the crop or commodity that cannot be marketed or sold in any market, as determined by FSA and any value received by or made available for a secondary use of the crop or commodity.

(g) Producers requesting payment under this part must maintain records which substantiate gross revenue for the tax year preceding the crop year for which coverage is requested.

(h) Producers requesting a waiver of service fees as a limited resource producer must maintain records which substantiate annual gross income for the two tax years preceding the crop year for which coverage is requested.

(i) Producers requesting payment under this part for a crop grown on certified organic acreage for which a price and T-yield are established, as provided in §§ 1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) A written certification in effect from a certifying agency indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (a certificate issued to a tenant may be used to qualify a landlord or other similar arrangement); and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(j) Producers providing reports of acreage that include transitional acreage being converted to certified organic acreage in accordance with an organic system plan must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) Written documentation from a certifying agent indicating an organic system plan is in effect for the acreage; and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(k) Producers who are exempt from National Organic certification requirements, as specified in § 205.101 of this title, and are requesting payment under this part for a crop grown on organic acreage for which a price and T-yield is established, as provided in §§ 1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location, a copy of their organic system plan, which must be developed with an organic certifying agent.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74575, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020; 85 FR 16232, Mar. 23, 2020]

§ 1437.9 Unit definition.

(a) The unit identifies the interest of the producer in the administrative county on the basis of the unique relationship of the owner to one or more operators. The unit is the foundation for all determinations of acreage, production, value, AUD, approved yields, requisite losses, payments, and other program requirements.

(b) Separate and distinct units are:

(1) One-hundred percent interest as owner/operator;

(2) Less than one-hundred percent interest as owner or operator; or

(3) Less than one-hundred percent interest, as owner or operator in an inverse relationship.

[71 FR 13743, Mar. 17, 2006. Redesignated at 79 FR 74574, Dec. 15, 2014]

§ 1437.10 Causes of loss.

(a) To qualify for assistance, production losses or prevented planting must occur as a result of an eligible cause of loss during the coverage period. Not all causes of loss are eligible causes of loss for all crops or all commodities.

(b) An eligible cause of loss is:

(1) Damaging weather, including, but not limited to:

(i) Drought;

(ii) Hail;

(iii) Excessive moisture;

(iv) Freeze;

(v) Tornado;

(vi) Hurricane;

(vii) Excessive wind;

(viii) Lightning;

(ix) Insufficient chill hours, but only for specific crops and locations for which FSA has determined in advance of a coverage period, based on FSA's review of sufficient scientific evidence that a requisite amount of chill hours is required for the crop to produce and a lack of chill hours is adverse to the crop's production without any regard to any management. In this context, ''without regard to any management'' means if a crop's inability to produce due to lack of chill hours can be mitigated by any managerial practices, application of chemical, or other management intervention, the lack of chill hours will not be included as an eligible cause of loss for the crop, In cases where FSA makes the decision to include insufficient chill hours as a cause of loss by itself for a crop and location, the crop and location and subsequent crop year coverage period for which the decision will apply will be specified in a list maintained by FSA. If the crop and location is not on that list, then insufficient chill hours can only be an eligible cause of loss if the insufficient chill hours were related to a damaging weather event or an adverse natural occurrence included in paragraphs (b)(1) or (2) of this section; or

(x) Any combination of paragraphs (b)(1)(i) through (viii) of this section;

(2) Adverse natural occurrence, including, but not limited to:

(i) Earthquake;

(ii) Flood; or

(iii) Volcanic eruption; or

(3) A condition related to an eligible cause of loss in paragraphs (b)(1) or (2) of this section (in this context, the related condition must result from the damaging weather or adverse natural occurrence; it is not eligible if it occurs on its own) including, but not limited to:

(i) Heat;

(ii) Insect infestation;

(iii) Disease;

(iv) Insufficient chill hours;

(v) Wildfire; or

(vi) Any combination thereof.

(c) The damaging weather, adverse natural occurrence, or related condition as specified in paragraph (b) of this section must occur in the coverage period before or during harvest and directly cause, accelerate, or exacerbate destruction or deterioration of the eligible crop as determined by the county committee.

(d) NAP coverage is provided against only eligible causes of loss. All specified causes of loss must be due to a naturally occurring event during the coverage period. All other causes of loss, including, but not limited to, the following, are not covered:

(1) Negligence, mismanagement, or wrongdoing by the NAP covered producer or anyone else;

(2) Failure to follow recognized good farming practices for the eligible crop;

(3) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(4) Failure or breakdown of the irrigation equipment facilities, unless the failure or breakdown is due to an eligible cause of loss. If damage is due to an eligible cause of loss, the producer must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless FSA determines it is not practical to do so. Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

(5) Failure to carry out a good irrigation practice for the covered crop, if applicable;

(6) Any cause of loss that results in damage that is not evident or would not have been evident during the NAP coverage period. Even though FSA may not inspect the damaged crop until after the end of the NAP coverage period, only damage due to eligible causes that would have been evident during the NAP coverage period will be covered;

(7) Except for lack of chill hours as specified in paragraph (b)(1)(viii) of this section, normal variance of temperatures from average normal temperatures including, but not limited to, cyclic yield variations that occur for a crop that are not causes of loss included in paragraphs (b)(1) or (2) of this section;

(8) Any managerial decision to attempt to grow or produce a crop in an area that is not suited for successful

commercial production of the eligible NAP crop as determined by FSA;

(9) Failure of the producer to reseed to the same crop during the same planting period in those areas and under such circumstances where it is customary to do so;

(10) Except for tree crops and perennials and as provided for in §1437.201, inadequate irrigation resources at time of planting;

(11) Except as specified in §1437.303, a loss of inventory or yield of aquaculture (including ornamental fish), floriculture, or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason;

(12) Any failure to provide a controlled environment or exercise good nursery practices when such controlled environment or practices are a condition of eligibility under this part;

(13) Except as provided for mollusks in §1437.303, any alleged or actual loss of inventory or missing non-containerized inventory resulting from a managerial decision not to seed or raise the eligible NAP crop in containers, net pens, or wire baskets, on ropes, or using similar devices;

(14) For crops grown using organic farming practices, failure to comply with organic standards;

(15) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices;

(16) Weeds; or

(17) Failure to harvest or market the crop due to lack of a sufficient plan or resources.

(e) The lack of an eligible cause of loss during a coverage period is not a compliance matter or issue. NAP will not provide assistance for crops that do not suffer from an eligible cause of loss during a coverage period. The relief provisions of these regulations and of 7 CFR part 718 cannot be used to pay producers of crops that did not suffer from an eligible cause of loss during the coverage period.

[79 FR 74576, Dec. 15, 2014, as amended at 85 FR 12220, Mar, 2, 2020]

EDITORIAL NOTE: At 85 FR 12220, Mar. 2, 2020, §1437.10 was amended; however, the amendment in paragraph (b)(1)(ix) could not be incorporated due to inaccurate amendatory instruction.

§1437.11 Notice of loss, appraisal requirements, and application for payment.

(a) In addition to the written notice of loss requirements specified for all crops in paragraphs (b) and (c) of this section, for hand-harvested or rapidly deteriorating crops and for other crops determined by FSA, at least one producer having a share in the unit must notify FSA of the damage or loss through the administrative county office for the unit within 72 hours of the date damage or loss on the unit first becomes apparent. Notification required under this paragraph may be via telephone to the administrative county office during business hours or via written notice on a form prescribed by FSA as specified in paragraph (c) of this section.

(b) Unless written notice for hand-harvested or rapidly deteriorating crops has already been provided within 72 hours of date of damage or loss as specified in paragraphs (a) and (c) of this section, in case of damage to any NAP covered crop, at least one producer having a share in the unit must file a notice of loss in the administrative county office:

(1) For prevented planting claims, within 15 days after the final planting date;

(2) For low yield claims and value loss claims, the earlier of:

(i) 15 days after the disaster occurrence or date of loss or damage to the crop first becomes apparent; or

(ii) 15 days after the normal harvest date.

(c) The notice of loss specified in paragraph (b) of this section must be for each crop and be in writing on a form prescribed by FSA and include:

(1) The alleged cause of crop damage;

(2) Date the disaster occurred and when the damage or loss first became apparent;

(3) A copy of the contract or agreement if a contract or agreement of a guaranteed payment for planted acreage exists;

(4) The type of loss that occurred, for example, prevented planting or low yield;

(5) Practices used, for example, irrigated or non-irrigated;

(6) For prevented planting:

(i) Total intended planted acreage of the crop on the unit;

(ii) Total acreage of the crop planted on the unit;

(iii) Whether seed, chemicals, fertilizer, etc. was purchased, delivered, or an arrangement for purchase or delivery was made for the intended to be planted crop;

(iv) What and when land preparation measures were completed, and

(v) What has been done or will be done with the acreage, for example, abandoned, replanted, etc.;

(7) For low yield:

(i) Total acreage devoted to the crop in the unit;

(ii) Total acreage of the crop affected;

(iii) What and when land preparation measures and practices were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, for example, harvested, destroyed, replanted to a different crop, abandoned, etc.; and

(8) Any other information requested by an FSA authorized representative.

(d) Producers who file a notice of loss, using the appropriate FSA form, for crop acreage that will not be harvested as intended, such as abandoned, put to another use, replanted to the same or a different crop, or in the case of forage, acreage intended to be mechanically harvested that will be both mechanically harvested and grazed, must:

(1) Not put the crop to another use or prepare the acreage for replanting or otherwise change any conditions of the crop or acreage until written notification of release of the crop or acreage is received from FSA;

(2) Request, using the appropriate FSA form, an appraisal of the un-harvested acreage for potential production and release of the crop or acreage:

(i) No less than 15 calendar days before replanting or in the case of forage intended to be mechanically harvested, grazing of the crop acreage.

(ii) Within 72 hours after the acreage is abandoned for hand-harvested or rapidly deteriorating crops, or within 15 calendar days after the acreage is abandoned for all other crops;

(iii) No later than the normal harvest date of the crop, as determined by FSA.

(3) Request the loss adjustor on the day the initial appraisal is completed, or request in any manner of written correspondence received in the administrative county office no later than 15 calendar days after the request for initial appraisal is submitted, that the appraisal be deferred until the end of the growing season, the producer be permitted to establish representative sample areas according to paragraph (d)(4) of this section, and that the acreage be released immediately when:

(i) Time is critical for replanting, or other urgent reasons; and

(ii) Producers and loss adjustors cannot resolve disagreement with the initial appraisal of the acreage to be released.

(4) Establish representative sample areas of the acreage according to the loss adjustor's instructions received on the day the initial appraisal is completed or, if the loss adjustor is not available, according to the FCIC Loss Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted. Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by FSA, until released by FSA.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor's appraisal. Producers unable to be present for the appraisal may contest the results of the appraisal in the administrative county office.

(e) Crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for

potential production of seed when producers provide FSA acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by FSA.

(f) Forage acreage for which a notice of loss is filed and:

(1) Catastrophic coverage was obtained for forage intended to be grazed will have NAP benefits calculated based on §1437.401(f);

(2) Catastrophic coverage was obtained for forage that was intended to be mechanical harvested but will be grazed and not mechanical harvested;

(i) Must have an appraisal and release for the unit to have NAP benefits calculated based on mechanical harvested forage; or

(ii) For which an appraisal or release was not obtained, will have a loss calculated as specified in §1437.401(f).

(3) Buy-up coverage was obtained for forage intended to be mechanically harvested but will be grazed and not mechanically harvested:

(i) Must have an appraisal and release in order for the unit to have NAP benefits calculated based on the loss of expected mechanically harvested forage; or

(ii) For which an appraisal or release was not obtained is ineligible for payment consideration and will have the unit guarantee assigned to the forage crop acreage.

(g) Producers must file an application for payment on a form specified by FSA to apply for NAP payments within 60 days of the last day of coverage for the crop year for any NAP covered crop in the unit.

(h) A notice of loss under paragraph (a) of this section filed beyond the time specified in this section or notification provided under paragraph (b) of this section may satisfy the requirements of these provisions, if, at the discretion of FSA, the notice is filed at such time that permits:

(1) An authorized FSA representative to verify information on the notice of loss by inspecting the affected acreage or the crop or commodity involved; and

(2) The county committee or an authorized FSA representative the opportunity to determine that eligible disaster conditions caused the damage or loss.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13743, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74577, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

§1437.12 Average market price and payment factors.

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by FSA;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop type within a State, as determined by FSA, for a crop year.

(b) For each crop and location (State or county or other location as determined appropriate by FSA), FSA will establish an average market price using the following method:

(1) Obtaining market prices for each crop for the 5 consecutive crop years beginning with the most recent year for which price data is available; then

(2) Dropping the crop years in the 5 consecutive crop years with the highest and lowest prices; and then

(3) Averaging the prices for the remaining 3 crop years in the 5 consecutive crop years; and

(4) If 5 crop years of data is not available for determining the average market price, FSA will use the best data available, as determined by FSA, for as many crop years of average market price data as possible within the 5 consecutive crop years beginning with the most recent year for which price data is available and determine an average market price for the crop by computing a simple average of the prices for those years.

(c) FSA will disregard small differences in prices for a crop based on different types or varieties or various intended uses. If FSA determines there is a significant amount of production being marketed in a location or region at significantly different prices, FSA

will determine whether or not to establish different average market prices for subsequent crop years.

(d) Separate average market prices may be established within a State based on conventional or organic practices or the intended market, as determined by FSA.

(e) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(f) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted, or planted but not harvested, as determined by FSA. The imposition of payment factors is based on the acre status and disposition not whether a NAP participant actually incurs or does not incur expenses.

(g) The average market price used to determine the amount of NAP assistance for crop acreage reported with a specific intended use will be based on the smaller of the approved average market price established for either the specific intended use reported on the acreage report or actual market or actual use for which more than 50 percent of the acreage's harvested production is marketed. For example: A producer reports 50 acres of carrots intended for fresh market and the producer suffers a 70 percent loss of production on the acreage. Additionally, more than 50 percent of the carrots actually produced from the 50 acres are sold as processed carrots. Because the established average market price for processed carrots is less than fresh carrots and more than 50 percent of the harvested crop was marketed as processed carrots, the established average market price for processed carrots will be used to compute the producer's NAP assistance. If an average market price had not been established for processed carrots in this example before the coverage period, then the average market price for fresh carrots would be used.

(1) The provisions of this paragraph do not apply to secondary use, peanuts, seed intended uses, and small grain intended for use as forage.

(2) [Reserved]

(h) For crops with an established yield and market price for multiple intended uses, the average market price will be as provided in paragraph (g) of this section except that for producers who choose buy-up coverage under §1437.5(d), the average market price used to determine assistance may be based on historical production and acreage evidence provided by the participant. The evidence of actual final use of historical production must come from the 3 previous crop years immediately preceding the coverage year. Only years in which the producer had acreage and production harvested will be counted. In other words, if a producer only marketed a crop in 1 previous year, FSA will review the evidence of final use in that year and based on the evidence for that year, determine a percent of production attributable to each use. Based on that determined percentage, an appropriate average market price and use will be calculated and determined, respectively. If more than 1 and up to 3 years of final use evidence are available, FSA will count all years and production and determine the average. If a producer had crop acreage and evidence of final use for any year in the 3-year period, but the producer does not submit evidence for any other year in the 3-year period for which the producer also had acreage, the average market price will be as provided in paragraph (g) of this section.

(i) A final payment price will be determined by multiplying, as appropriate, the average market price determined in this section by the applicable payment factor (that is, harvested, unharvested, or prevented planting).

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74578, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

§1437.13 Crop definition.

(a) For the purpose of providing benefits under this part, FSA will, at its discretion, define crops as specified in this section.

(b) FSA may separate or combine types and varieties as a crop when specific credible information as determined by FSA is provided showing the

crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by FSA.

(c) FSA may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA, and all crops are recognized by FSA as able to achieve the expected yield, as determined by FSA.

(d) FSA may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA.

(e) FSA may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA.

(f) FSA may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by FSA, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 79 FR 74574, 74583, Dec. 15, 2014]

§ 1437.14 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but will not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits specified in paragraph (a) of this section will not apply to:

(1) Emergency Loans made under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961–1970).

(2) Livestock Forage Disaster Program (LFP) payments as specified in part 1416 of this chapter,

(3) Tree Assistance Program (TAP) payments as specified in part 1416 of this chapter, or

(4) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) payments as specified in part 1416 of this chapter.

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative

county office from which the payment was received.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21018, Apr. 9, 2013. Redesignated and amended at 79 FR 74574, 74579 Dec. 15, 2014]

§ 1437.15 Payment and income limitations.

(a) The provisions of part 1400 of this title apply to NAP.

(b) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013. Redesignated and amended at 79 FR 74574, 74579, Dec. 15, 2014]

§ 1437.16 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of §718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, apply.

(c) A person is ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by FSA to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to FSA together with interest and other amounts as determined appropriate to the circumstances by FSA. FSA may assess liquidated damages of 10 percent of the projected or received NAP payment for the crop or commodity in violation. Liquidated damages are in addition to any refund of program benefits and are not considered a penalty.

(e) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part is in addition to any other liability under any civil or criminal fraud statute or any other provision of law.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary waives the ineligibility to receive benefits under this program but only for beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgment lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

(m) Any person or legal entity who has a debt from nonpayment of the premium for coverage levels specified in §1437.5(c) will be ineligible for assistance under any subsequent crop year NAP coverage on any crop from the crop year of nonpayment of premium until the debt is paid in full.

(1) If a person or legal entity is ineligible for NAP assistance due to the debt because of the nonpayment of premium, FSA will permit the person or legal entity to file an application for coverage together with payment of any service fees; however, that application and payment of service fees will not make the person or legal entity eligible for any assistance until the premium debt is paid in full.

(2) Service fees paid with applications for coverage that are filed by persons or legal entities who are ineligible for NAP assistance as specified in paragraph (m) of this section will not be credited to any unpaid premium debt nor are they refundable.

(n) A person or legal entity ineligible for NAP assistance under paragraph (m) of this section may become eligible for future NAP assistance if they remit all unpaid debt related to the nonpayment of premium before the application for payment filing deadline (see §1437.11(g)).

(o) Any NAP payment that was not issued for a prior NAP crop year due to an outstanding debt as specified in paragraph (m) of this section will not be issued.

(p) Unpaid debt related to the failure to pay any premium satisfied by administrative offset will reinstate the eligibility of a person or legal entity from the date the offset satisfies all the unpaid premium debt with interest.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 79 FR 74574, 74579, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

§1437.17 Matters of general applicability.

(a) The regulations in this part and FSA's interpretation of the regulations in this part, the basic provisions, and internal agency directives issued to FSA State and county offices are matters of general applicability and are not individually appealable in administrative appeals according to §§11.3 and 780.5 of this title. Additionally, the regulations in this part and any FSA decisions that are not based on specific facts derived from an individual participant's application, contract, or file are not appealable under parts 11 or 780 of this title. Examples of such decisions include how NAP is generally administered, signup deadlines, payment rates, or any other generally applicable matter or determination that is made by FSA for use in all similarly situated applications. The only extent to which the matters referenced in this section are reviewable administratively in an appeal forum is whether FSA's determination of facts incidental to the case and decision to apply the generally applicable matter is in conformance with the regulations in this part.

(b) The relief provisions of 7 CFR part 718 are applicable only to participant ineligibility and noncompliance decisions. The relief provisions cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with all the eligibility and compliance requirements of this part. Equitable relief provisions of part 718 of this title cannot be used to obtain a review of either these regulations, the requirements of this part, the agency's interpretations of this part, or compliance provisions of this part.

[79 FR 74579, Dec. 15, 2014]

Subpart B—Determining Yield Coverage Using Actual Production History

§1437.101 Actual production history.

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing noninsured crop disaster assistance.

[71 FR 13744, Mar. 17, 2006]

§1437.102 Yield determinations.

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of

historical yields of the crop in the county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2015 crop year, the five consecutive crop years immediately preceding the previous crop year would be 2009 through 2013.

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(4) Will be based on the most representative available historical information, as determined by FSA, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; National Institute of Food and Agriculture records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated and nonirrigated; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will be adjusted on a State-wide basis, for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in §1437.12(b), based on an average of FCIC organic yield reductions, as determined by FSA, for the same crop in the same State.

(7) May be adjusted on a county-wide or regional basis for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in §1437.12(b), based on the most representative available historical information, as determined by FSA.

(8) Will, for all land for those producers who have land physically located in multiple counties and administered in one county office, be based on the administrative county's expected yield for the crop.

(9) May be reduced, on a specific APH basis, when, as determined by FSA, it does not accurately reflect the productive capability of specific crop acreage.

(10) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production in a crop year that is not a bypass year.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production history base period when the producer reports acreage for the crop but fails to certify a report of production in a crop year that is not a bypass year. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with §1437.8.

(4) May not be used if the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by FSA, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If FSA determines the documentation is inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to FSA, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and FSA approves such recommendation.

(d) A zero-credited yield:

(1) Will be used in the applicable crop year of the actual production history base period for each crop year following the crop year containing an assigned yield, for which producers do not certify a report of acreage or production in a crop year that is not a bypass year, as determined by CCC.

(2) May be replaced with an actual yield when the producer provides a certification of production and acceptable production records for the applicable crop year in accordance with § 1437.8.

(e) An approved yield:

(1) Is used in the calculation of the requisite loss and payment.

(2) Is a simple average of a minimum of four base period crop year yields, *i.e.*, actual yield, T-yield, assigned yield, or zero-credited yield. The base period is 10 crop years, except 5 crop years for apples and peaches, immediately preceding the crop year for which an approved yield is calculated, not including any crop year the crop was out of rotation, not planted, or prevented from being planted.

(3) Will be calculated according to the following criteria when the producer does not have at least four consecutive crop years of actual, assigned, or zero credited yields beginning with the most recent crop year.

(i) If there are no certified acceptable production records of actual production for the most recent crop year, or zero credited or assigned yields in the producer's APH base period, and no formula provided for the producer under paragraphs (e)(3)(ii) through (iv) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the applicable T-yield for each of the minimum four APH crop years.

(ii) If certified acceptable production records of actual production are available for only the most recent crop year and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-yield for the remaining three of the minimum four APH crop years.

(iii) If certified acceptable production records of actual production are available for only the two most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the remaining two of the minimum four APH crop years.

(iv) If certified acceptable production records of actual production are available for only the three most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the three actual yields plus 100 percent of the applicable T-yield for the remaining crop year of the minimum four APH crop years.

(f) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by FSA, producers may request FSA replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(g) If approved yields were calculated for any of the 1995 through 2014 crop years, and subsequently in that period production was not certified, producers may request FSA replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(h) If producers add land in the farming operation and do not have available production records for the added land FSA will calculate an approved yield for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than the unit guarantee for the crop year and unit acreage has increased by more than 75 percent of

the historical average acreage, FSA may adjust the approved yield, as determined by FSA.

(i) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by FSA, will have an approved yield calculated based on a combination of 100 percent of the applicable T-yield and any actual yield for the minimum crop years of the producer's APH base period. Producers who have produced the crop for one or more crop years must provide FSA, at the administrative county office serving the area in which the crop is located, a certification of production and production records for the applicable crop years as specified in §1437.8.

(k) Further adjustments may be made as necessary to accomplish the purposes of this program.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006; 76 FR 4805, Jan. 27, 2011; 79 FR 74579, 74583, Dec. 15, 2014]

§ 1437.103 Late-planted acreage.

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined by FSA, may be eligible for reduced coverage as specified in paragraphs (b) and (c) of this section.

(b) Crops with multiple planting periods and value loss crops are not eligible for reduced coverage for late planting. Exceptions to this are the last planting period of multiple planted crops and multiple-planting periods having a defined gap of 60 days or more between harvest date of the previous planting period and beginning of the immediately following planting period.

(c) For crops with a growing period of:

(1) 60 days or less and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of unit expected production for each day the crop is actually planted after the final planting date;

(ii) From 6 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(2) 61 to 120 calendar days and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected unit production of the applicable late-planted crop acreage and for days 6 through 20 an additional 1 percent for each day the crop is planted after the final planting date;

(ii) From 21 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(3) 121 calendar days or more and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage and for days 6 through 25 an additional 1 percent for each day the crop is planted after the final planting date.

(ii) From 26 or more calendar days after the final planting date, production will be assigned equal to unit guarantee of the producer's expected production of the applicable late-planted crop acreage.

[79 FR 74580, Dec. 15, 2014]

§ 1437.104 Assigned production.

(a) When determining losses under this section, assigned production will be used to offset the loss of production when, as determined by FSA, any of the following has occurred:

(1) The loss is a result of an ineligible cause of loss and the loss has not been otherwise accounted for.

(2) The unit acreage was destroyed without consent notwithstanding §1437.11(e).

(3) The producer has a contract to receive a guaranteed payment for all or a

portion of the production, as opposed to or regardless of delivery of such production.

(4) The crop is planted after the STC-established final planting date according to §1437.103.

(5) Irrigation equipment is not capable of supplying adequate water to sustain the expected production of a normal irrigated crop.

(6) For normal irrigated annual, biennial, and perennial crops, the irrigation practice is not used.

(7) For normal irrigated annual and biennial crops, the supply of available water at the beginning of the crop year is not adequate.

(8) For normal irrigated perennial crops, the supply of available water at the beginning of the crop year is not adequate as a result of an ineligible cause of loss.

[71 FR 13745, Mar. 17, 2006, as amended at 79 FR 74580, 74583, Dec. 15, 2014]

§1437.105 Determining payments for low yield.

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part will be made on eligible crops with eligible losses by:

(1) Multiplying the total acres devoted to the eligible crop by the producers share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50, 55, 60, or 65 percent, as selected by the producer as specified in §1437.5; of the approved yield per acre for the commodity for the producer.

(3) Multiplying the net production of the total eligible acreage by the producer's share;

(4) Subtracting the product of paragraph (a)(3) of this section from the product of paragraph (a)(2) of this section;

(5) Multiplying the amount calculated as specified in paragraph (a)(4) of this section by 55 or 100 percent (selected by the producer as specified in §1437.5) of the final payment price calculated as specified in §1437.12; and

(6) Adding the producer's share of any salvage value and secondary use and subtracting the result from the result of paragraph (a)(5) of this section.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

(c) The crops and locations eligible for quality adjustments will be determined by the Deputy Administrator in advance of the coverage period, only if supporting documentation of industry standards for quality adjustments are available. For specific crops and locations determined by the Deputy Administrator for which buy-up coverage under §1437.5(d) is elected and for which adjustments to net production based on quality losses will be authorized for a coverage period in accordance with this paragraph, producers may opt for an adjustment of net production of a covered crop as specified in paragraph (a)(3) of this section based on a specific measure of quality against a set of standards that are acceptable to FSA. The standards and permissible adjustments to net production based on alleged quality losses stemming from eligible causes of loss in a coverage period will be based on FSA's review of sufficient documentation and are subject to FSA acceptance and State committee recommendation to the Deputy Administrator. The crops and locations where quality adjustments will be permitted will be as specified on a list maintained by FSA.

(d) Production will not be adjusted under this section unless all other provisions of this section are met and the crop and location are included on a list of approved crops and locations before the beginning of the coverage period for the crop.

(e) A producer of a NAP covered crop in a location and coverage period approved by FSA as specified in paragraphs (c) and (d) of this section who opts for the quality loss adjustment option must submit verifiable records obtained by testing or analysis of the specific crop's production and the alleged loss of quality stemming from an eligible cause of loss in the coverage period. Records must meet requirements of §1437.8(a)(3).

(f) If a quality adjustment option is sought by a producer and approved for

a crop year, FSA will enter the adjusted value of net production into the producer's actual production history yield database for the loss year. The lower actual yield that results from the quality adjustment will be used for future approved yield calculations.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 71 FR 13745, 13746, Mar. 17, 2006; 78 FR 21019, Apr. 9, 2013; 79 FR 74580, Dec. 15, 2014]

§ 1437.106 Honey.

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with §1437.8, honey producers must provide a record of colonies to FSA. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies must include:

(1) The address of the producer's headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit consists of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the honey operation. Producers must complete the following actions only in the control office:

(1) File an application for coverage;

(2) File a report of colonies;

(3) Report total unit production; and

(4) Request to change a unit's control office.

(g) Actions that may be taken in any administrative county office includes:

(1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with §1437.11.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

(1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community based on the applicable guarantee at a rate determined in accord with this part and the authorizing legislation.

(j) Premiums for coverage levels specified in §1437.5(c) will be calculated based on the highest number of colonies reported during the program year.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006, as amended at 79 FR 74581, Dec. 15, 2014]

§ 1437.107 Maple sap.

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

(1) Are located on land the producer controls by ownership or lease;

(2) Are managed for production of maple sap;

(3) Are at least 30 years old and 12 inches in diameter; and

(4) Have a maximum of 4 taps per tree according to the tree's diameter.

(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with §1437.7, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to FSA no later than the beginning of the crop year.

(d) In addition to the applicable records required under §1437.8, producers must report the:

(1) Total number of eligible trees on the unit;

(2) Average size and age of producing trees; and

(3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap is 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by FSA, is available to FSA to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup is multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap will be recorded on the basis of gallons of sap per tap.

(h) The unit's expected production is determined by:

(1) Multiplying the number of taps placed in eligible trees; by

(2) The approved per tap yield as determined in accordance with §1437.102.

(i) Payments will be based on the amount of losses for this community based on the applicable guarantee at a rate determined in accord with this part and the authorizing legislation.

(j) Premiums for coverage levels specified in §1437.5(c) will be calculated based on the number of taps reported by the producer.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006; 79 FR 74581, Dec. 15, 2014]

§1437.108 Hemp.

(a) Hemp is eligible for NAP coverage only if the hemp is:

(1) Grown under an official certification or license issued by the applicable governing authority that permits the production of the hemp;

(2) Grown under a hemp processor contract executed by the applicable acreage reporting date; and

(3) Planted for harvest as hemp in accordance with the requirements of the hemp processor contract and the production management practices of the hemp processor.

(b) In addition to all other requirements under this part, a producer who obtains NAP coverage for hemp must submit by the acreage reporting date:

(1) The certification or license number;

(2) A copy of the certification form or official license issued by the applicable governing authority authorizing the producer to produce hemp; and

(3) A copy of each fully executed hemp processor contract.

(c) A producer must submit THC test results taken at harvest of the hemp crop. If the producer does not submit the THC test results, that production will not be included in the producer's actual yield for the purpose of determining a producer's APH under §1437.101.

(d) Hemp is not eligible for NAP coverage if it is planted on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in states as determined by the Deputy Administrator, or sunflowers were grown the preceding crop year.

(e) Hemp that has a THC level above 0.3 percent:

(1) Is not eligible for NAP benefits; and

(2) Is not included in the producer's actual yield for the purpose of determining a producer's APH under §1437.101.

(f) Hemp will be ineligible for NAP payment for that NAP crop year if the producer's certification or license is terminated or suspended during that NAP crop year.

[85 FR 12220, Mar. 2, 2020]

§§1437.109–1437.200 [Reserved]

Subpart C—Determining Coverage for Prevented Planted Acreage

§1437.201 Prevented planting acreage.

(a) In addition to the provisions of this section, the provisions of §718.103 of this title apply.

(b) When determining losses under this section:

(1) Producers must be prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(2) Prevented planted acreage will be considered separately from low-yield losses of planted acreage of the same crop.

(c) Acreage and units ineligible for prevented planting coverage includes, but is not limited to:

(1) Value-loss crops, including, but not limited to, Christmas trees, aquaculture, and ornamental nursery;

(2) Tree crops and other perennials, unless:

(i) The producer can prove resources unique to the planting of tree crops and other perennials were available to plant, grow, and harvest the crop, as determined by FSA; and

(ii) FSA has approved the planting period for the crop;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Any acreage on which a crop was harvested, hayed, or grazed during the crop year;

(5) Acreage of which the producer or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements; and

(6) Acreage planted during the late-planting period.

[71 FR 13746, Mar. 17, 2006, as amended at 79 FR 74581,74583, Dec. 15, 2014]

§ 1437.202 Determining payments for prevented planting.

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment for prevented planting will be determined by:

(1) Adding the total planted and prevented-planted acres;

(2) Multiplying the sum of paragraph (a)(1) of this section by .35;

(3) Subtracting the product of paragraph (a)(2) of this section from the total prevented planted acres;

(4) Multiplying the producer's share by the approved yield by the positive result of paragraph (a)(3) of this section;

(5) Multiplying the producer's share by the assigned production;

(6) Subtracting the product of paragraph (a)(5) of this section from the product of paragraph (a)(4) of this section; and

(7) Multiplying the result of paragraph (a)(6) of this section by 55 or 100 percent, as selected by the producer as specified in § 1437.5, of the final payment price calculated under § 1437.12.

(b) Yields for purposes of paragraph (a) of this section will be calculated in the same manner as for low-yield claims.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13746, Mar. 17, 2006; 79 FR 74581, Dec. 15, 2014]

§§ 1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

§ 1437.301 Value loss.

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities that do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. FSA determines which crops are value-loss crops, but unless otherwise announced, value-loss crops are those identified in §§ 1437.303 through 1437.309. Lost production of value loss crops is eligible for payment only as specified in this subpart.

(b) The crop year for all value loss crops, except ornamental nursery as specified in § 1437.305, is October 1 through September 30.

(c) Producers must file an application for coverage in accordance with § 1437.7, and must:

(1) Provide a report of the crop, commodity, and facility to FSA for the acreage or facility, in a form prescribed by FSA, no later than the beginning of the crop year.

(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and

(3) Provide an accurate accounting of the inventory, as required by FSA.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74581, 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

§ 1437.302 Determining payments.

(a) Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(1) Multiplying the field market value of the crop before the disaster, or for buy-up coverage specified in § 1437.5(c), the lesser of the field market value of the crop before the disaster or the maximum dollar value for coverage sought, by 50, 55, 60, or 65 percent, as selected by the producer as specified in § 1437.5;

(2) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(3) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(4) Multiplying the result from paragraph (a)(3) of this section by 55 or 100 percent, as selected by the producer as specified in § 1437.5, plus whatever appropriate factor reflects savings from non-harvesting of the damaged crop or other factors as appropriate; and

(5) Subtracting the producer's share of any salvage value, if applicable.

(b) [Reserved]

[79 FR 74581, Dec. 15, 2014]

§ 1437.303 Aquaculture, including ornamental fish.

(a) Aquaculture is a value loss crop and will have NAP assistance calculated only in accord with restrictions set in this section. Eligible aquacultural species only include:

(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.

(2) Fish raised as feed for other fish that are consumed by humans; and

(3) Ornamental fish propagated and reared in an aquatic medium.

(b) The aquacultural facility must be:

(1) A commercial enterprise on private property;

(2) Owned or leased by the producer, with readily identifiable boundaries; and

(3) Managed and maintained using good aquacultural growing practices.

(c) Producers must:

(1) Ensure adequate and proper flood prevention, growing medium, fertilization or feeding, irrigation and water quality, predator control, and disease control; and

(2) Have control of the waterbed.

(d) Eligible aquacultural species must be:

(1) Placed in the facility and not be indigenous to the facility; and

(2) Kept in a controlled environment; and

(3) Planted or seeded in containers, wire baskets, net pens, on ropes, or similar device designed for the protection and containment of the seeded aquacultural species.

(e) For mollusks that are not planted or seeded in containers, net pens, on ropes, wire baskets, or similar device designed for the containment and protection of the mollusks, the only eligible cause of loss of mollusks or missing mollusk inventory will be a direct result of a National Oceanic and Atmospheric Administration-determined tropical storm, typhoon, or hurricane.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the aquacultural species are produced in a facility in accordance with paragraphs (b), (c) and (d) of this section.

(g) If all other eligibility provisions of this part are determined by FSA to be satisfied, assistance will be provided to producers for eligible NAP aquaculture crop losses that are the direct result of drought.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74581, Dec. 15, 2014]

§ 1437.304 Floriculture.

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible floriculture is limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by FSA; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by FSA.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under ''value loss'' rules, but under the rules for normal production low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value are counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted are counted as worth full value.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74581, 74583, Dec. 15, 2014]

§ 1437.305 Ornamental nursery.

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention, growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as an ornamental plant, will be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the ornamental nursery is maintained in accordance with this section.

(g) For the 2010 and subsequent crops, the crop year for ornamental nursery is June 1 through May 31.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74582, 74583, Dec. 15, 2014]

§ 1437.306 Christmas tree crops.

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, will be considered as worth full value based on the age of the tree at the time of disaster.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, Dec. 15, 2014]

§ 1437.307 Mushrooms.

(a) Eligible mushrooms is a value loss crop and is only compensable in accord

with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

(1) Temperature and humidity controls;

(2) Proper and adequate lighting; and

(3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

(1) Adequate hygiene;

(2) Overall cleanliness;

(3) Isolation or minimum contact procedures;

(4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the mushrooms are maintained in accordance with this section.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74583, Dec. 15, 2014]

§ 1437.308 Ginseng.

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer;

(b) Ginseng will not be eligible to generate benefits under this part if it:

(1) Is indigenous to the facility;

(2) Is grown solely for medicinal purposes; and

(3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

(1) Adequate drainage;

(2) Proper and adequate shade;

(3) Accurate pH level;

(4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;

(5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and

(6) Disease control.

(d) Ginseng producers must:

(1) Provide a report of inventory of all ginseng, as determined by FSA;

(2) Provide production and sales records necessary to determine the value of eligible ginseng;

(3) Allow an FSA-certified loss adjustor to verify loss, including physically removing representative samples;

(4) Maintain and provide, as determined by FSA, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and

(5) Possess a valid food processing license issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the ginseng was produced in accordance with this section.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582,74583, Dec. 15, 2014]

§ 1437.309 Turfgrass sod.

(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.

(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.

(c) The unit of measure for all turfgrass sod is a square yard.

(d) Turfgrass sod having any value will be considered as worth full value.

(e) In addition to the records required in §1437.8, producers seeking payment must provide information to FSA regarding the average number of square yards per acre and all unharvested areas.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

§ 1437.310 Sea grass and sea oats.

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under §1437.305 and such claims will not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under §1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with §1437.12.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with §1437.12.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by FSA.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

(1) Be owned or leased by the producer;

(2) Have readily identifiable boundaries; and

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by FSA.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

(1) Flood prevention;

(2) Growing medium;

(3) Fertilization or feeding;

(4) Irrigation and water quality;

(5) Weed control;

(6) Pest and disease control;

(7) Rodent and wildlife control; and

(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by FSA; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster will be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, will be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

[67 FR 62324, Oct. 7, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

§§ 1437.311–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

§ 1437.401 Forage.

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by FSA, produced in a commercial operation. Benefits are not available for first-year seeding

of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by FSA. The commercial operation must use acceptable farming, pasture, and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be mechanically harvested will be treated under the rules for low-yield crops as calculated under §1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart apply to all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in §1437.8, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must request an appraisal from the administrative county office for the unit prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to FSA as intended to be mechanically harvested, but which is instead subsequently grazed, will be considered for crop definition purposes as mechanically harvested. Expected production of the specific acreage for which catastrophic coverage was obtained will be calculated on the basis of carrying capacity. The loss of such grazed forage will be determined according to paragraph (f) of this section. For acreage intended to be mechanically harvested which is instead subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested but instead grazed will be deemed to be un-harvested for the purposes of determining a payment factor.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage is a separate crop and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in §1437.8, producers must specify whether the intended forage crop is intended for fall and winter, spring, or full season forage. In addition to other eligibility requirements, FSA will consider other factors, such as water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) FSA will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed for producers with catastrophic coverage, on the basis of:

(1) The percentage of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss; or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area, the collective percentage of loss as determined by FSA for the geographical region after consideration of at least two independent assessments of grazed forage acreage conditions, or by alternative methods as determined by the Deputy Administrator.

(i) The assessments must be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Collective percentage of loss determined by FSA for the geographical region may be based on any or all the following methods as may be available and as determined appropriate by the Deputy Administrator:

(A) Independent assessments of grazed forage acreage conditions;

(B) The U.S. Drought Monitor;

(C) Information obtained from loss adjusters with sufficient forage knowledge to provide grazing loss assessments;

(D) Data obtained from approved areas where clippings are obtained on a

regular basis to compare with expected levels of production in a geographical region; or

(E) Information from Natural Resources Conservation Service technical service providers having a specialized knowledge.

(ii) Neither the assessments themselves, nor collective loss percentages established in accordance with this section are subject to appeal. FSA's determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

(g) For those NAP covered participants who seek to have a NAP payment determined based on paragraph (f)(2) of this section, a notice of loss under §1437.11 will not be required; only an application for payment must be filed. Unless otherwise expressed by the NAP covered participant, FSA will presume the participant to want assistance for grazed forage determined according to paragraph (f)(2) of this section.

[79 FR 74582, Dec. 15, 2014, as amended at 85 FR 12221, Mar. 2, 2020]

§1437.402 Carrying capacity.

(a) FSA will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) FSA may establish separate carrying capacities for irrigated and nonirrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, FSA may adjust the expected AUD for the specific forage acreage with catastrophic coverage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by FSA, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

§1437.403 Determining payments.

(a) Subject to payment limits, availability of funds, and other limits as may apply, payments for catastrophic coverage of losses of forage reported to FSA as intended to be grazed will be determined by:

(1) Multiplying the eligible acreage by the producer's share;

(2) Dividing the result from paragraph (a)(1) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific catastrophic coverage acreage, as determined by FSA;

(3) Multiplying the result from paragraph (a)(2) of this section by the number of days established as the grazing period;

(4) Adding adjustments of AUD for practices and production to the product of paragraph (a)(3) of this section;

(5) Multiplying the result from paragraph (a)(4) of this section by the applicable percentage of loss established by FSA;

(6) Multiplying the amount of assigned AUD, as determined by FSA, by the producer's share;

(7) Subtracting the result from paragraph (a)(6) of this section from the result from paragraph (a)(5) of this section;

(8) Multiplying the result from paragraph (a)(4) of this section by 0.50;

(9) Subtracting the result from paragraph (a)(8) of this section from the result from paragraph (a)(7) of this section; and

(10) Multiplying the result from paragraph (a)(9) of this section by 55 percent of the final payment price established in accordance with § 1437.12.

(b) [Reserved]

[79 FR 74582, Dec. 15, 2014]

§ 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560–0175.

Subpart F—Determining Coverage in the Tropical Region

SOURCE: 71 FR 52739, Sept. 7, 2006, unless otherwise noted.

§ 1437.501 Applicability; definition of "tropical region" and additional definitions.

(a) This subpart applies to covered tropical crops in the tropical region, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops do not include ''value loss'' crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for NAP covered in this part are determined by the rules that otherwise apply to NAP subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that are specified in part 1400 of this chapter.

(b) For purposes of this subpart:

(1) *Tropical region* includes, as may be further limited by the Deputy Administrator: Hawaii, American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, and the territories and possessions of the United States. Other areas may be included as determined by the Deputy Administrator to be required by law. References to specific areas elsewhere in this subpart will not limit the ability of the Deputy Administrator to limit the geographic scope of this subpart.

(2) *Covered tropical crops* means those crops and commodities in the tropical region governed by this subpart, those being all crops and commodities in the tropical region that are otherwise eligible for generating a benefit claim under this part, except for value-loss crops as defined elsewhere in this part.

(c) The Deputy Administrator may adjust requirements for assistance so as to provide a fair transition from previous rules for crop covered by this subpart to those provisions which are provided for in this subpart.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014]

§ 1437.502 Coverage periods and fees for covered tropical crops.

(a) The crop year for all covered tropical crops is the calendar year (January 1 through December 31).

(b) The application closing date for all covered tropical crops is December 31 of the calendar year before the applicable crop year.

(c) For covered tropical crops, the maximum service fee per crop per county provided at § 1437.7 is required of the producer for coverage of:

(1) With respect to annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by FSA.

(2) With respect to perennial crops, all acreage of the crop existing during the crop year, as determined by FSA.

(d) Multiple planting periods and final planting dates are not applicable for covered tropical crops. However, nothing in this section will be interpreted to prohibit assigning different production expectations to different fields.

(e) The coverage period for perennial and other crops covered by this subpart begins on January 1 of the relevant crop year and ends on December 31 of that year.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

§ 1437.503 Covered losses and record-keeping requirements for covered tropical crops.

(a) Prevented planting coverage is not available for covered tropical crops.

(b) Except in Hawaii, Puerto Rico, and other areas approved by the Deputy Administrator, or as otherwise approved by the Deputy Administrator in individual cases, eligible causes of loss for covered tropical crops will only include hurricanes, typhoons, and named tropical storms.

(c) Producers who have applied for coverage on covered tropical crops must maintain for the full coverage period contemporaneous records. Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed. In this regard:

(1) Producers may be selected on a random or targeted basis for compliance review with this requirement and any other requirements that may apply to this program.

(2) A failure to maintain acceptable contemporaneous records throughout the crop year may be treated by FSA as grounds of ineligibility for benefits under this part.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

§ 1437.504 Notice of loss for covered tropical crops.

(a) The provisions of §1437.11(d) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to §1437.11, producers must provide records maintained according to §1437.503(c) of the:

(1) Number of acres or other basis of measurement, as applicable, of the crop from which production could be achieved existing on the day the eligible natural disaster occurred or, for prolonged natural disasters, such as a drought and similar damage where applicable, existing on the day the notice of loss is filed.

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop plantings (damaged or undamaged) which were in existence on the farm at the time of the disaster including production from the covered plantings (in existence at the time of the loss event) that may occur after the loss event even when, to the extent provided for in paragraph (c) of this section, the harvest occurs after the end of the crop year. Crop acreage of the covered crop that is in existence at the time of the loss event that can be harvested after the eligible natural disaster must be harvested, or continue to be harvested, and the harvested acres and production reported to FSA according to this subpart, except that for perennial crops the requirement ends with the end of the crop year. For non-perennial crops the obligation to harvest ends with the end of the life-cycle for the plantings that were in existence at the time of the loss event. In this regard:

(i) Except as otherwise determined by FSA, such production, before or after the loss event, will be taken into account in computing eligibilities.

(ii) Production that must be reported under paragraph (b)(2)(i) of this section includes, except in the case of perennial plants, all production irrespective of whether the production occurs in the same crop year.

(iii) For perennial plants, only production in the same crop year must be reported.

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at the time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

(3) Failure to keep sufficient records to allow the computations provided for in this subpart is grounds for denial of the claim.

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after

the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

(1) Collective acres of the crop acreage planted or in the ground during the crop year.

(2) Total production harvested from the crop acreage for the full crop year in the case of a perennial plant and for the full life of the plants for other crops.

(d) With respect to the report required in paragraph (c) of this section:

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 calendar days from the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, an appropriate crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be destroyed until authorized by FSA.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014]

§ 1437.505 Application for payment for the tropical region.

(a) For producers of covered tropical crops, except as specified in paragraph (b) of this section or approved in individual cases by the Deputy Administrator, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.11 and 1437.504.

(b) For producers in Puerto Rico, Hawaii, Guam, American Samoa, and the Northern Marianna Islands, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.11 and 1437.504, or

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

[78 FR 21019, Apr. 9, 2013, as amended at 79 FR 74583, Dec. 15, 2014]

PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

Subpart A—Common Provisions

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AUTHORITY: 7 U.S.C. 8111.

SOURCE: 75 FR 66234, Oct. 27, 2010, unless otherwise noted.

Subpart A—Common Provisions

§ 1450.1 Administration.

(a) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), or a designee. In the field, the regulations in this part will be implemented by the Farm Service Agency (FSA) State and county committees (''State committees'' and ''county committees,'' respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the FSA Deputy Administrator for Farm Programs (Deputy Administrator).

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority to a State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Subject to the availability of funds and all other eligibility provisions of this part, this part provides the terms, conditions and requirements of BCAP. In the event that CCC determines that available funds are insufficient to accommodate the demand for establishment and annual payments as well as all potential applications for matching payments for collection, harvest, storage, and transportation of eligible material, without any advance notice other than that stated here, CCC may prioritize the expenditure of program funds in favor of funding for the selection of BCAP project areas and the establishment and annual payments related to those project areas, and may make such other priorities in approvals that will, in the determination of the Deputy Administrator, advance the purposes of BCAP.

[75 FR 66234, Oct. 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011; 80 FR 10573, Feb. 27, 2015]

§ 1450.2 Definitions.

(a) The definitions in part 718 of this title apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Advanced biofuel means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas

(including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and other fuel derived from cellulosic biomass.

Agricultural land means cropland, grassland, pastureland, rangeland, hayland, and other land on which food, fiber, or other agricultural products are produced or capable of being produced.

Agricultural residue means crop residue from agricultural lands, including woody orchard waste.

Animal waste means the organic animal waste of animal operations such as confined beef or dairy, poultry, or swine operations including manure, contaminated runoff, milking house waste, dead poultry, bedding, and spilled feed. Depending on the poultry system, animal waste can also include litter, wash-flush water, and waste feed.

Annual payment means the annual payment specified in the BCAP contract for BCAP project areas that is issued to a participant for placing eligible land in BCAP.

Biobased product means a product determined by CCC to be a commercial or industrial product (other than food or feed) that is:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

Bioenergy means renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

Biofuel means a fuel derived from renewable biomass.

Biomass conversion facility means a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, or advanced biofuels.

Conservation district is as defined in part 1410 of this chapter.

Conservation plan means a schedule and record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures for eligible crops and the collection or harvesting of eligible material, as appropriate, and addresses natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Contract acreage means eligible land that is covered by a BCAP contract between the producer and CCC.

Delivery means the point of delivery of an eligible crop or eligible material, as determined by the CCC.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs, or a designee.

Dry ton means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content. Woody material dry ton weight is determined in accordance with applicable American Society for Testing and Materials (ASTM) standards.

Eligible crop means a crop of renewable biomass as defined in this section that is eligible for establishment payments and annual payments as specified in Subpart C of this part.

Eligible land means agricultural and nonindustrial private forest lands on which eligible crops for establishment payments and annual payments may be grown, as specified in subpart C of this part.

Eligible material means renewable biomass, including agricultural residue, as defined in this section that is harvested directly from the land and that is eligible for matching payments, as specified in subpart B of this part.

Eligible material owner, for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material, who has the risk of loss in the material that is delivered to an eligible facility and who has directly or by agent delivered or intends to deliver the eligible material to a qualified biomass conversion facility, including:

(1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and

(2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the US Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted a copy of the permit or contract authorizing such collection to CCC.

Equivalent plan means a plan approved by a State or other State agency or government entity that is similar to and serves the same purpose as a forest stewardship plan and has similar goals, objectives, and terms. These plans generally address natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Establishment payment means the payment made by CCC to assist program participants in establishing the practices required for non-woody perennial crops and woody perennial crops, as specified in a producer contract under the project portion of BCAP.

Food waste means, as determined by CCC, a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

Forest stewardship plan means a long-term, comprehensive, multi-resource forest management plan that is prepared by a professional resource manager and approved by the State Forester or equivalent State official. Forest stewardship plans address the following resource elements wherever present, in a manner that is compatible with landowner objectives concerning:

(1) Soil and water;

(2) Biological diversity;

(3) Range;

(4) Aesthetic quality;

(5) Recreation;

(6) Timber;

(7) Fish and wildlife;

(8) Threatened and endangered species;

(9) Forest health;

(10) Archeological, cultural and historic sites;

(11) Wetlands;

(12) Fire; and

(13) Carbon cycle.

Higher-value product means an existing market product that is comprised principally of an eligible material or materials and, in some distinct local regions, as determined by the CCC, has an existing market as of October 27, 2010. Higher-value products may include, but are not limited to, products such as mulch, fiberboard, nursery media, lumber, or paper.

Highly erodible land means land as determined as specified in part 12 of this title.

Indian tribe has the same meaning as in 25 U.S.C. 450b (section 4 of the Indian Self-Determination and Education Assistance Act).

Institution of higher education has the same meaning as in 20 U.S.C. 1002(a) (section 102(a) of the Higher Education Act of 1965).

Intermediate ingredient or feedstock means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material (including plant, animal, and marine material), or forestry material that is subsequently used to make a more complex compound or product.

Legal entity has the same meaning as in the regulations in §1400.3 of this chapter.

Matching payments means those CCC payments provided for eligible material delivered to a qualified biomass conversion facility.

Native sod means land:

(1) On which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and

(2) That had never been tilled or the producer cannot substantiate that the ground has ever been tilled for the production of an annual crop as of June 18, 2008.

Nonindustrial private forest land means, as defined in 16 U.S.C. 2103a (the Cooperative Forestry Assistance Act of 1978, as amended), rural lands with existing tree cover, or suitable for growing trees, where the land is owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

Offer means, unless otherwise indicated, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the establishment payment and annual payment component of BCAP.

Operator means a person who is in general control of the land enrolled in BCAP, as determined by CCC.

Participant means a person who is participating in BCAP—either as a person who has applied for and is eligible to receive payments, has a BCAP contract, or is a project sponsor.

Payment period means a contract period of either up to 5 years for annual and non-woody perennial crops, or up to 15 years for woody perennial crops, during which the participant receives an annual payment under the establishment payment and annual payment component of BCAP.

Person has the same meaning as in the regulations in §1400.3 of this chapter. In addition, for BCAP, the term ''producer'' means either an owner or operator of BCAP project acreage that is physically located in a BCAP project area, or a producer of an eligible crop produced on that acreage.

Producer means, with respect to subpart B of this part, a person who had the risk of loss in the production of the material that is the subject of the BCAP payment; and with respect to subpart C of this part, an owner or operator of contract acreage that is physically located within a BCAP project area or a producer of an eligible crop produced on that acreage and who has the risk of loss in the relevant crop at the relevant period of time or who will have the risk of loss in crops required to be produced.

Project area means a geographic area with specified boundaries submitted by a project sponsor and approved by CCC under the establishment payment and annual payment component of BCAP.

Project sponsor means a group of producers or a biomass conversion facility who proposes a project area.

Qualified biomass conversion facility means a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a BCAP agreement with CCC.

Renewable biomass means:

(1) Appropriate materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Department of the Interior, Bureau of Land Management land that:

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of 16 U.S.C. 6512 (specifically, sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 and large-tree retention provisions of subsection (f)); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including:

(A) Feed grains;

(B) Other agricultural commodities;

(C) Other plants and trees; or

(D) Algae;

(ii) Waste material, including:

(A) Crop residue;

(B) Other vegetative waste material (including wood waste and wood residues);

(C) Animal waste and byproducts (including fats, oils, greases, and manure); and

(D) Food waste and yard waste.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group. A socially disadvantaged group is a group whose members have been

subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

Technical assistance means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. BCAP technical assistance may include, but is not limited to: technical expertise and services, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed to support delivery of technical and program services, such as technical standards, resource inventories, training, data, technology, monitoring, compliance spot checks, and effects analyses.

Tribal government means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to 43 U.S.C. 1601–1629h (the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible to receive or retain all or a portion of BCAP payments.

Yard waste means any renewable biomass generated from municipal or residential land, such as urban forestry materials, construction or demolition materials, trimmings from grasses and trees, or biomass removed due to invasive species or weather-related disaster, that can be separated from and has low potential (such as contamination with plastics, metals, chemicals, or other toxic compounds that cannot be removed) for the generation of toxic by-products resulting from conversion, and that otherwise cannot be recycled for other purposes (such as post-consumer waste paper).

[75 FR 66234, Oct. 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011; 80 FR 10573, Feb. 27, 2015; 88 FR 1892, Jan. 11, 2023]

§ 1450.3 General.

(a) The objectives of BCAP are to:

(1) Support the establishment and production of eligible crops for conversion to bioenergy and biobased products in selected project areas; and

(2) Assist agricultural and forest landowners and operators with matching payments to support the collection, harvest, storage, and transportation costs of eligible material for use in a biomass conversion facility.

(b) A participant must implement and adhere to a conservation plan, forest stewardship plan, or equivalent plan prepared in accordance with BCAP guidelines, as established and determined by CCC. A conservation plan, forest stewardship plan, or equivalent plan for contract acreage must be implemented by a participant and must be approved by the conservation district in which the lands are located, or, in the case of Federal lands, the appropriate approval authority of jurisdiction. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) Agricultural and forest landowners and operators must comply with any applicable existing conservation plan, forest stewardship plan, or equivalent plan and all other applicable laws, regulations, or Executive Orders for any removal of eligible material for use in a biomass conversion facility to receive matching payments.

(d) Except as otherwise provided in this part, a participant may receive, in addition to any payments under this part, financial assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in BCAP, without any commensurate reduction in BCAP payments.

§ 1450.4 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a BCAP contract, CCC may terminate the BCAP contract.

(2) If the BCAP contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under the contract and must refund all payments previously received, plus interest; and

(ii) The participant must pay liquidated damages to CCC in an amount as specified in the contract.

(b) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and would not deter the accomplishment of the purposes of BCAP.

§ 1450.5 Performance based on advice or action of USDA.

(a) The provisions of § 718.303 of this title relating to performance based on the action or advice of an authorized representative of USDA apply to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise permitted by this part.

(b) [Reserved]

[75 FR 66234, Oct. 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.6 Access to land.

(a) For purposes related to this program, the participant must upon request provide any representative of USDA, or designee thereof, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant must provide such representatives or designees with access to examine records for the land to determine land classification, eligibility, or for other purposes, and to determine whether the participant is in compliance with the terms and conditions of the BCAP contract.

§ 1450.7 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part will be divided as specified in the applicable contract. CCC may refuse to enter into a contract when there is a disagreement among persons or legal entities seeking enrollment as to a person's or legal entity's eligibility to participate in the contract as a tenant or sharecropper, and there is insufficient evidence, as determined by CCC, to indicate whether the person or legal entity seeking participation as a tenant or sharecropper has an interest in the acreage offered for enrollment in the BCAP.

(b) CCC may remove an operator or tenant from a BCAP contract when:

(1) The operator or tenant requests in writing to be removed from the BCAP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined appropriate by CCC; or

(4) A court of competent jurisdiction orders the removal of the operator or tenant from the BCAP contract and such order is received by CCC.

(c) Tenants who fail to maintain tenancy on the acreage under contract for any reason may be removed from a contract by CCC.

§ 1450.8 Payments not subject to claims.

(a) Subject to part 1403 of this chapter, any payment or portion of the payment due any person or legal entity under this part will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

(b) [Reserved]

§ 1450.9 Appeals.

(a) Except as provided in paragraph (b) of this section, a person or legal entity applying for participation may appeal or request reconsideration of an

adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by the Natural Resources Conservation Service, U.S. Forest Service, Department of Interior, Bureau of Land Management, or other authorized technical assistance provider may be appealed in accordance with procedures established in part 614 of this title or otherwise established by the respective Agency.

[75 FR 66234, Oct. 27, 2010. Redesignated and amended at 80 FR 10573, Feb. 27, 2015]

§ 1450.10 Scheme or device.

(a) If CCC determines that a person or legal entity has employed a scheme or device to defeat the purposes of this part, or any part, of any USDA program, payment otherwise due or paid such person or legal entity during the applicable period may be required to be refunded, with interest calculated from the date of disbursement of the funds by CCC, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or legal entity of any payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities must report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest may include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest will be considered a scheme or device under this section.

[75 FR 66234, Oct. 27, 2010. Redesignated at 80 FR 10573, Feb. 27, 2015]

§ 1450.11 Filing of false claims.

(a) If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the contract may be terminated, in which case CCC may demand a full refund of all prior payments.

(b) False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan, forest stewardship plan, or equivalent plan. Any amounts paid under these circumstances must be refunded to CCC, together with interest as determined by CCC, and any amounts otherwise due the participant will be withheld.

(c) The remedies provided for in this section will be in addition to any other remedy available to CCC and in addition to any criminal penalty or any other remedy available to the United States.

[75 FR 66234, Oct. 27, 2010. Redesignated at 80 FR 10573, Feb. 27, 2015]

§ 1450.12 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part may be paid to the participant's successor(s) in accordance with part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part will be subject to the compliance requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part will be in addition to any other remedy, including, but not limited to, criminal remedies or actions for damages in favor of CCC, or the United States as may be permitted by law.

(d) Absent a scheme or device to defeat the purposes of BCAP, when an owner loses control of BCAP acreage enrolled under subpart C of this part due to foreclosure and the new owner chooses not to continue the contract in

accordance with §1450.215 refunds will not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

[75 FR 66234, Oct. 27, 2010. Redesignated at 80 FR 10573, Feb. 27, 2015]

Subpart B—Matching Payments

§ 1450.100 General.

(a) A person or legal entity with the right to collect or harvest eligible material for the sale and delivery of such eligible material to a qualified biomass conversion facility, may be eligible for payment under the provisions of this subpart.

(b) [Reserved]

§ 1450.101 Qualified biomass conversion facility.

(a) To be considered a qualified biomass conversion facility, a biomass conversion facility must enter into an agreement with CCC and must:

(1) Meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;

(2) Agree in writing to:

(i) Maintain accurate records of all eligible material purchases and related documents regardless of whether matching payments will be sought by the seller; and

(ii) Make available at one place and at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to BCAP for not less than 3 years after the date that eligible material was delivered to the qualified biomass conversion facility;

(iii) Clearly indicate the actual tonnage delivered on the scale ticket or equivalent to be provided to the eligible material owner;

(iv) Calculate a total dry ton weight equivalent of the actual tonnage delivered and provide that measurement to the eligible material owner;

(v) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered. Woody material dry ton weight must be determined in accordance with applicable ASTM standards; and

(vi) Purchase eligible material at a fair market price that is consistent with similar products, regardless of whether or not the seller has applied for or receives a matching payment authorized by this subpart or if the seller and purchaser are related entities.

(b) For a qualified biomass conversion facility, CCC can:

(1) Periodically inform the public that payments may be available for deliveries of eligible material to such qualified biomass conversion facility;

(2) Maintain a listing of qualified biomass conversion facilities for general public access and distribution that may include general information about the facility and its eligible material needs; and

(3) Suspend, terminate, or take other actions as appropriate when CCC determines a qualified biomass conversion facility fails to comply with the agreement.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10573, Feb. 27, 2015]

§ 1450.102 Eligible material owner.

(a) In order to be eligible for a payment under this subpart, a person or legal entity must:

(1) Be a producer of an eligible crop that is produced on contract acreage authorized by subpart C of this part; or

(2) Have the right to collect or harvest eligible material, regardless of whether the eligible material is produced on contract acreage authorized by subpart C of this part, and such person may only receive payment if the risk of loss for the material transferred to that person occurred prior to the time the payment is made that will be used to determine the matching payment that is requested under this subpart; and

(3) Certify that the eligible material for which a payment may be issued as specified in §1450.106 has been harvested according to a conservation plan, forest stewardship plan, or equivalent plan, and, if woody eligible material collected or harvested on land other than contract acreage, the woody

material is a by-product of preventative treatments that was removed to reduce hazardous fuels or to reduce or contain disease or insect infestation.

(b) A qualified biomass conversion facility that meets the requirements of paragraph (a) of this section may be considered an eligible material owner if it otherwise meets the definition in this part.

[75 FR 66234, Oct. 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011; 80 FR 10573, Feb. 27, 2015]

§ 1450.103 Eligible material for payments.

(a) Except for the exclusions specified in paragraph (b) of this section, in order to qualify for matching payments, eligible material must meet the following requirements:

(1) Eligible material must be collected or harvested by the eligible material owner:

(i) Directly from:

(A) National Forest System land, Bureau of Land Management land;

(B) Non-Federal land; or

(C) Land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States;

(ii) Consistent with a conservation plan, forest stewardship plan, or plan that CCC determined to be an equivalent plan, that provides the following:

(A) The purpose of the harvest of the eligible material;

(B) The expected volume of the harvest;

(C) The total number of acres to be harvested;

(D) The name of the eligible material owner(s); and

(E) Any additional information, as determined by CCC; and

(iii) Consistent with Executive Order 13112, ''Invasive Species. ''

(2) Woody eligible material produced on land other than contract acreage must be:

(i) By-products of preventative treatments that were removed to reduce hazardous fuels or to reduce or contain disease or insect infestation; and

(ii) If harvested from Federal lands then done so in accordance with the requirements for old-growth maintenance, restoration, and management direction provided by 16 U.S.C. 6512 for Federal lands; and

(3) Eligible material must be delivered to a qualified biomass conversion facility (as specified in §1450.101 and other provisions of these regulations).

(b) Notwithstanding paragraph (a) of this section, payments under this subpart are not authorized for:

(1) Any eligible material delivered before May 28, 2015;

(2) Any eligible material for which payment from a biomass conversion facility was received before the application for payment under this subpart is received and approved by the FSA county office, as specified in §1450.104;

(3) Material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber;

(4) Animal waste and by-products of animal waste including fats, oil, grease, and manure;

(5) Food waste and yard waste;

(6) Algae;

(7) Woody eligible material that is not a by-product of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation;

(8) Any woody eligible material collected or harvested outside contract acreage that would otherwise be used for higher-value products;

(9) Any otherwise eligible material collected or harvested outside contract acreage that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value market product in order to be used for heat, power, biobased products, research, or advanced biofuels; or

(10) Bagasse.

(c) For eligible woody material harvested or collected from public lands, a

person having the right to harvest or collect eligible material pursuant to a contract or permit with the U.S. Forest Service or other appropriate Federal agency will not be eligible for additional haul costs unless the facility is a further distance than specified in the contract requirement or the material was not a mandatory removal item from Federal lands.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10573, Feb. 27, 2015]

§ 1450.104 Signup.

(a) Applications for participation and requests for payments under this subpart will be accepted as specified in the FSA announcement(s) in a given fiscal year through the end of the announced sign up period on a continuous basis, subject to the availability of funds.

(b) An eligible material owner must apply to participate in the matching payments component of BCAP before delivery is made to a qualified biomass conversion facility and before payment for the eligible material is received from the qualified biomass conversion facility. The application must be submitted to the FSA county office servicing the tracts of land where the collection and harvest will occur and must be approved by CCC, before any delivery is made to or payment is made by the qualified biomass conversion facility for the eligible material.

(c) Applications must include the following:

(1) Based on information obtained from contracts, agreements, or binding letters of intent:

(i) An estimate of the total dry tons of eligible material expected to be sold to the qualified biomass conversion facility;

(ii) The type(s) of eligible material that is expected to be sold;

(iii) The name of the qualified biomass conversion facility that will purchase the eligible material;

(iv) The expected, fair market, per dry ton payment rate the owner plans to receive for the delivery of the eligible material; and

(v) The date or dates the eligible material is expected to be delivered to the qualified biomass conversion facility.

(2) A new or amended conservation plan, forest stewardship plan, or equivalent plan, as specified in § 1450.103.

(d) Eligible material owners who deliver eligible material to more than one qualified biomass conversion facility must submit separate applications for each facility to which eligible material will be delivered.

(e) After delivery, eligible material owners must notify CCC and request the payment. Payments will be disbursed only after delivery is verified by CCC.

(f) Information that must be submitted to CCC in order to request payments includes settlement, summary, or other acceptable data that provide:

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using standard moisture determinations applicable to the eligible material (Woody material dry ton weight is determined in accordance with applicable ASTM standards);

(2) Total payment received, including the per dry-ton payment rate(s) matched with actual and dry weight tonnage delivered; and

(3) The qualified biomass conversion facility's certification as to the authenticity of the information.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10573, Feb. 27, 2015]

§ 1450.105 Obligations of participant.

(a) All participants whose payment application was approved must agree to:

(1) Carry out and certify compliance with the terms and conditions of the payment application including adherence to a conservation plan, forest stewardship plan, or equivalent plan, as appropriate; and

(2) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP contract and this part.

(b) [Reserved]

§ 1450.106 Payments.

(a) Payments under this subpart will be made for a term not to exceed 2 years, commencing on the date that CCC issues the first payment under this subpart to the participant. The 2-year eligibility period for each participant runs from the date that the participant is first issued any matching payment from CCC, regardless of payment for subsequent deliveries to any other biomass conversion facility. The eligibility period will not include any BCAP matching payments received prior to May 28, 2015.

(b) Payments under this subpart will be paid at a rate of $1 for each $1 per dry ton provided by the qualified biomass conversion facility for the market-based sale of eligible material in an amount up to $20 per dry ton.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10574, Feb. 27, 2015]

Subpart C—Establishment Payments and Annual Payments

§ 1450.200 General.

(a) As provided in this subpart, establishment payments and annual payments may be provided by CCC to producers of eligible crops within a project area.

(b) Eligible crops include renewable biomass, as defined § 1450.2, excluding:

(1) Any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10574, Feb. 27, 2015]

§ 1450.201 Project area proposal submission requirements.

(a) To be considered for selection as a project area, a project sponsor must submit a proposal to CCC that includes, at a minimum:

(1) A description of the sources of renewable biomass, eligible land, and eligible crops that may be enrolled within the proposed project area;

(2) A letter of commitment from a biomass conversion facility stating that the facility will use, for BCAP purposes, eligible crops intended to be produced in the proposed project area;

(3) Information demonstrating that the biomass conversion facility has or will have sufficient equity available to operate if the facility is not operational at the time the project area proposal is submitted; and

(4) Any other information that gives CCC a reasonable assurance that the biomass conversion facility will be in operation in a timely manner so that it will use the eligible crops, as determined by CCC.

(b) The project area description required in paragraph (a) of this section needs to specify geographic boundaries and be described in definite terms such as acres, watershed boundaries, mapped longitude and latitude coordinates, or counties.

(c) The project area needs to be physically located near a biomass conversion facility or facilities, as determined by CCC.

(d) Project area proposals may limit the nature and types of eligible crops to be established within a project area.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10574, Feb. 27, 2015]

§ 1450.202 Project area selection criteria.

(a) In selecting project areas, CCC will consider:

(1) The dry tons of the eligible crops proposed to be produced in the proposed project area and the probability that such crops will be used for BCAP purposes;

(2) The dry tons of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(3) The anticipated economic impact in the proposed project area;

(4) The opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed project area;

(5) The participation rate by beginning or socially disadvantaged farmers or ranchers;

(6) The impact on soil, water, and related resources;

(7) The variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices, and monoculture and polyculture crop mixes;

(8) The range of eligible crops among project areas;

(9) Status as an existing project area that has received funding under this subpart and the continuation of funding such project areas to advance the maturity of such project areas; and

(10) Any other necessary additional information, as determined by CCC.

(b) [Reserved]

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10574, Feb. 27, 2015]

§ 1450.203 Eligible persons and legal entities.

(a) In order to be eligible to enter into a BCAP contract for this subpart, a person or legal entity must be an owner, operator, or tenant of eligible land within a project area, as defined in § 1450.204 and be the person or entity with the ability to perform under the terms of the contract.

(b) [Reserved]

§ 1450.204 Eligible land.

(a) For the purposes of this subpart, eligible land must be physically and legally capable of producing an eligible crop and must be:

(1) Agricultural land; or

(2) Nonindustrial private forest land.

(b) For the purposes of this subpart, eligible land is not:

(1) Federal- or State-owned land, including land owned by local governments or municipalities;

(2) Land that is native sod;

(3) Land enrolled in the Conservation Reserve Program (CRP) as specified in part 1410 of this chapter for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) A CRP payment for this land has been received in the current fiscal year; or

(4) Land enrolled in the Agricultural Conservation Easement Program (ACEP) for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) An ACEP payment for this land has been received in the current fiscal year.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10575, Feb. 27, 2015]

§ 1450.205 Duration of contracts.

(a) Contracts under this subpart will be for a term of up to:

(1) 5 years for annual and non-woody perennial crops; and

(2) 15 years for woody perennial crops.

(b) The establishment time period may vary due to: Type of crop, agronomic conditions (for example, establishment time frame, winter hardiness), and other factors.

§ 1450.206 Obligations of participant.

(a) All participants subject to a BCAP contract must:

(1) Carry out the terms and conditions of the contract;

(2) Make available to CCC or to an institution of higher education or other entity designated by CCC, such information as CCC determines to be appropriate to promote the production of eligible crops and the development of renewable biomass conversion technology;

(3) Comply with the highly erodible land and wetland conservation requirements of part 12 of this title;

(4) Implement a:

(i) Conservation plan,

(ii) Forest stewardship plan, or

(iii) Equivalent plan.

(5) Implement the conservation plan, forest stewardship plan, or equivalent plan which is part of such contract, in accordance with the schedule of dates included in such conservation plan, forest stewardship plan, or equivalent plan, unless CCC determines that the participant cannot fully implement the conservation plan, forest stewardship plan, or equivalent plan for reasons beyond the producer's control and CCC

and the participant agree to a modified plan.

(6) Demonstrate compliance with the conservation plan, forest stewardship plan, or equivalent plan through required self-certification subject to compliance spot checks, as determined by CCC.

(7) Establish temporary vegetative cover either within the timeframes required by the conservation plan, forest stewardship plan, or equivalent plan or as determined by the Deputy Administrator, if the eligible crops cannot be timely established; and

(8) If the participant has a share of the payment greater than zero, be jointly and severally responsible with the other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the contract and this part.

(b) Payments may cease and producers may be subject to contract termination for failure to establish eligible crops.

(c) A contract will not be terminated for failure by the participant to establish an approved cover on the land if, as determined by CCC:

(1) The failure to plant or establish such cover was due to a natural disaster such as excessive rainfall, flooding, or drought; and

(2) The participant establishes the approved cover as soon as practicable after the wet or drought conditions that prevented the establishment of such cover subside.

[75 FR 66234, Oct. 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.207 Conservation plan, forest stewardship plan, or equivalent plan.

(a) The producer must implement a conservation plan, forest stewardship plan, or equivalent plan that complies with CCC guidelines and is approved by the appropriate conservation district for the land to be entered in BCAP. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, or disapproves the conservation plan, forest stewardship plan, or equivalent plan, such approval may be waived by CCC.

(b) The practices and management activities included in a conservation plan, forest stewardship plan, or equivalent plan, and agreed to by the producer, must be implemented in a cost-effective manner that meets BCAP purposes as determined by CCC.

(c) If applicable, a tree planting plan must be developed and included in the conservation plan, forest stewardship plan, or equivalent plan. Such tree planting plan may allow a reasonable time to complete plantings, as determined by CCC.

(d) Each conservation plan, forest stewardship plan, or equivalent plan, and any revision of the plan, will be subject to approval by CCC.

1450.208 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan, forest stewardship plan, or equivalent plan that meet all standards needed to cost-effectively establish:

(1) Annual crops;

(2) Non-woody perennial crops; and

(3) Woody perennial crops.

(b) [Reserved]

§ 1450.209 Signup.

(a) Offers for contracts may be submitted on a continuous basis to CCC as determined by the Deputy Administrator.

(b) [Reserved]

§ 1450.210 Acceptability of offers.

(a) Acceptance or rejection of any contract offered will be at the sole discretion of CCC, and offers may be rejected for any reason as determined appropriate to accomplish the purposes of BCAP.

(b) An offer to enroll land in BCAP will be irrevocable for such period as is determined and announced by CCC. The producer will be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by CCC. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and BCAP.

§ 1450.211 BCAP contract.

(a) In order to enroll land in BCAP, the participant must enter into a contract with CCC.

(b) The contract is comprised of:

(1) The terms and conditions for participation in BCAP;

(2) The conservation plan, forest stewardship plan, or equivalent plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a contract, the producer must submit an offer to participate as specified in § 1450.209;

(d) The contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the eligible land to be placed in the BCAP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve contracts on behalf of CCC.

(f) CCC will honor contracts even in the event that a project area biomass conversion facility does not become fully or partially operational.

(g) Contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) The BCAP practice fails or is not established after a certain time period, as determined by CCC, and the cost of restoring or establishing the practice outweighs the benefits received from the restoration or establishment;

(5) The contract was approved based on erroneous eligibility determinations; or

(6) CCC determines that such a termination is needed in the public interest.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in BCAP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest, as determined by CCC, and must pay liquidated damages as provided for in the contract and this part. CCC may permit the amount(s) to be repaid to be reduced to the extent that such a reduction will not impair the purposes of BCAP. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the contract when the land is purchased by or for the United States, as determined appropriate by CCC.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10575, Feb. 27, 2015]

§ 1450.212 Establishment payments.

(a) Establishment payments will be made available upon a determination by CCC that an eligible practice, or an identifiable portion of a practice, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, such payments will be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, such payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received establishment assistance from any Federal agency.

(d) Establishment payments may be authorized for the replacement or restoration of practices on land for which assistance has been previously allowed under BCAP, only if the failure of the original practice was due to reasons beyond the control of the participant, as determined by CCC.

(e) In addition, CCC may make partial payments when the participant completes identifiable components of the contract. CCC may make supplemental establishment payments, if necessary.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10575, Feb. 27, 2015]

§ 1450.213 Levels and rates for establishment payments.

(a) CCC will pay not more than 50 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan, not to exceed $500 per acre. For socially disadvantaged farmers or ranchers, as defined in part 718 of this title, establishment payments may not exceed $750 per acre.

(b) The average cost of performing a practice will be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by CCC. The average cost as determined by CCC will be used for payment purposes, if it is less than the actual cost for an individual participant.

(c) Except as otherwise provided for in this part, a participant may receive, in addition to any payment under this part, establishment assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in BCAP without a commensurate reduction in BCAP establishment payments.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10575, Feb. 27, 2015]

§ 1450.214 Annual payments.

(a) Annual payments will be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the BCAP contract.

(b) Based on the regulations in § 1410.42 of this chapter and as determined by CCC, annual payments include a payment based on all or a percentage of:

(1) A weighted average soil rental rate for cropland;

(2) The applicable marginal pastureland rental rate for all other land except for nonindustrial private forest land;

(3) For forest land, the average county rental rate for cropland as adjusted for forest land productivity for nonindustrial private forest land; and

(4) Any incentive payment as determined by CCC.

(c) The annual payment will be divided among the participants on a single contract as agreed to in such contract, as determined by CCC.

(d) A participant that has an established eligible crop and is therefore not eligible for establishment payments under § 1450.212 may be eligible for annual payments under the provisions of this section.

(e) In the case of a contract succession, annual payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual payments will be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) Annual payments will be reduced, as determined by CCC:

(1) By a percentage of the sum of the sale price and payments under subpart B of this part for the crop collected or harvested from the contract acreage as follows:

(i) By 1 percent if the eligible crop is delivered to a biomass conversion facility for conversion to cellulosic biofuels as defined by 40 CFR 80.1401;

(ii) By 10 percent if the eligible crop is delivered to a biomass conversion facility for conversion to advanced biofuels;

(iii) By 25 percent if the eligible crop is delivered to a biomass conversion facility for conversion to heat, power, or biobased products;

(iv) By 100 percent if the eligible crop is used for a purpose other than conversion to heat, power, biobased products, or advanced biofuels;

(2) If the producer violates a term of the contract; or

(3) In other circumstances deemed necessary or appropriate to carry out BCAP.

§ 1450.215 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, land subject to a BCAP contract, such new owner or operator, upon the approval

of CCC, may become a participant to a new BCAP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator will assume all obligations of the BCAP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a BCAP contract with CCC, then, except as otherwise determined by the Deputy Administrator:

(i) Establishment payments will be made to the past or present participant who established the practice; and

(ii) Annual payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in §1450.214(c).

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a BCAP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, or such other time as CCC determines to be appropriate, such contract will be terminated with respect to the affected portion of such land, and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Must refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by CCC. The provisions of §1450.211(g) will apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains BCAP contract acreage cannot be a party to the BCAP contract by succession. However, through an addendum to the BCAP contract, if the current operator of the property is one of the BCAP contract participants, the BCAP contract may remain in effect and, as permitted by CCC, such operator may continue to receive payments under such contract if CCC determines that such allowance is in the public interest and:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such Federal agency.

[75 FR 66234, Oct. 27, 2010, as amended at 80 FR 10575, Feb. 27, 2015]

PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

Sec.

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1455.2 Definitions.
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1455.20 Criteria for grant selection.
1455.21 Additional responsibilities of grantee.
1455.30 Reporting requirements.
1455.31 Miscellaneous.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

SOURCE: 75 FR 39140, July 8, 2010, unless otherwise noted.

§1455.1 Purpose and administration.

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA–HIP).

(b) VPA–HIP provides, within funding limits, grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and tribal governments. VPA–HIP is not an entitlement program and no grant will be made unless the application is acceptable to the Commodity Credit Corporation (CCC). CCC may reject a application for any reason deemed sufficient by CCC.

(c) The regulations in this part are administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS).

[75 FR 39140, July 8, 2010, as amended at 79 FR 44641, Aug. 1, 2014]

§1455.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all documents issued in accordance with this

part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Appropriate wildlife habitat means habitat that is suitable or proper, as determined by the applicable State or tribal government, to support fish and wildlife populations in the area.

Farm land means the land that meets definition of ''farmland'' in §718.2 of this title.

Forest land means land at least 120 feet wide and 1 acre in size with at least 10 percent cover (or equivalent stocking) by live trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated. Forest land includes transition zones, such as areas between forest and nonforest lands that have at least 10 percent cover (or equivalent stocking) with live trees and forest areas adjacent to urban and built-up lands. Roadside, streamside, and shelterbelt strips of trees must have a crown width of at least 120 feet and continuous length of at least 363 feet to qualify as forest land. Unimproved roads and trails, streams, and clearings in forest areas are classified as forest if they are less than 120 feet wide or an acre in size. Tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

Legal entity means any entity created under Federal or State law, excluding: (a) a local, State or Federal government or political subdivision or agency of such government; and (b) a Tribal government.

Privately-held land means farm, ranch, or forest land that is owned or operated by a person or legal entity.

Ranch land means land that meets the definition of ''farmland.''

State or *State government* means any State or local government, including State, city, town, or county government.

Tribal government means any Federally-recognized Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Wildlife-dependent recreation means a land use involving hunting, fishing, wildlife-observation, photography, environmental education and interpretation, or other activities as determined by CCC.

[75 FR 39140, July 8, 2010, as amended at 80 FR 19009, Apr. 9, 2015]

§ 1455.10 Eligible grant applicants.

(a) A State or Tribal government may apply for a VPA–HIP grant.

(b) Any applications received by an individual or entity that is not a State or tribal government will not be considered.

§ 1455.11 Application procedure.

(a) *Announcement of Program Funding (APF).* The CCC will issue periodic APFs for VPA–HIP on *www.grants.gov* subject to available funding. Unless otherwise specified in the applicable APF, applicants must file an original and one hard copy of the required forms and an application.

(b) *Single application.* A State or tribal government must include all proposed activity under a single application per APF review period. Multiple applications from an applicant during a single APF period will not be considered. The applicant is the individual State or Tribe; any application from any unit of the State or tribal government must be coordinated for a single submission of one application from the State or Tribe.

(c) *Incomplete applications.* Incomplete applications will not be considered for funding. However, incomplete applications may be returned, and may be resubmitted, if time permits.

(d) *Providing data.* Data furnished by grant applicants will be used to determine eligibility for the VPA–HIP benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(e) *Required forms.* The following forms must be completed, signed, and

submitted as part of the application; other forms may be required, as specified in the applicable APF:

(1) Application for Federal Assistance;

(2) Budget Information—Non-Construction Programs; and

(3) Assurances—Non-Construction Programs.

(f) *Application*. Each application must contain the following elements; additional required elements may be specified in the applicable APF:

(1) Title page;

(2) Table of contents;

(3) Executive summary, which includes;

(i) *Activities*. Provide a summary of the application that briefly describes activities proposed to be funded under the grant.

(ii) *Objectives, funding, performance, and other resources*. Include objectives and tasks to be accomplished, the amount of funding requested, how the work will be performed, whether organizational staff, consultants or contractors will be used, and whether other resources will be used;

(4) Eligibility certification that certifies that the applicant is a State or tribal government and the individual submitting the application is acting in a representative capacity on behalf of the State or tribal government;

(5) Application narrative that must include, but is not limited to, the following:

(i) *Project title*. The title of the proposed project must be brief (not to exceed 75 characters) yet describe the essentials of the project.

(ii) *Information sheet*. A separate one-page information sheet listing each of the evaluation criteria referenced in the APF, followed by the page numbers of all relevant material and documentation contained in the application that address or support the criteria.

(iii) *Objectives of the project*. This section must include the following:

(A) A description of how the VPA–HIP funding will be used to encourage public access to private farm, ranch, and forest land for hunting, fishing, and other recreational purposes;

(B) A description of the methods that will be used to achieve the provisions of paragraph (f)(5)(iii)(A) of this section;

(C) A description of how and to what extent the proposed program will meet with widespread acceptance among landowners;

(D) A detailed description of how and to what extent the land enrolled will have appropriate wildlife habitat and how program funds may be used to improve those habitats;

(E) A detailed description of how and to what extent public hunting and other recreational access will be increased on land enrolled under a USDA conservation program, or if conservation program land is not available, specify that there is no impact;

(F) A detailed description of how any additional Federal, State, tribal government, or private resources will be used to carry out grant activities; and

(G) A detailed description of how the public will be made aware of the location of the land enrolled.

(iv) *Work plan*. Applications must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved with administration of the grant, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of a VPA–HIP grant. The budget must present a breakdown of the estimated costs associated with VPA–HIP activities and allocate these costs to each of the tasks to be undertaken. Additional funds from Federal, State, tribal government, or private resources as well as grant funds and resources provided in kind must be accounted for in the budget.

(H) A description on how this will create a new program or enhance an existing program.

(v) *Performance evaluation criteria*. Applications should discuss how the State or tribal government will evaluate whether the program for which the grant is being sought will meet the stated goals for the State or tribal program, including but not limited to landowner and recreationist participation, outreach, and cost-effectiveness.

(vii) *Other similar efforts.* The applicant must describe its previous accomplishments and outcomes in public access activities, if any.

(viii) *Qualifications of personnel.* Applicants must describe the qualifications of personnel expected to perform key tasks, and whether these personnel are to be full- or part-time employees or contract personnel.

[75 FR 39140, July 8, 2010, as amended at 79 FR 44641, Aug. 1, 2014]

§ 1455.20 Criteria for grant selection.

(a) Incomplete or non-responsive applications will not be evaluated. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

(b) After all applications have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the announcement for program funding, a list of all applications in ranked order, together with funding level recommendations, will be submitted to the Chief or designee.

(c) Unless supplemented in a APF, applications for grants for VPA–HIP will be evaluated using the criteria listed in this section. The distribution of points to be awarded per criterion will be identified in the APF.

(1) *Benefits.* The application will be evaluated to determine whether and to what extent the project's anticipated outcomes promote improvement of public access for wildlife-dependent recreation and intended environmental benefits.

(2) *Project description and feasibility.* The application will be evaluated on the extent and quality to which the applicant demonstrates a reasonable approach to the project, sufficient resources to complete the project, and a capability to complete the project in a timely manner.

(3) *Widespread acceptance and maximizing participation of landowners.* The application will be evaluated based on the applicant's plan for encouraging the participation of owners and operators of privately-held farm, ranch, and forest land, and for engaging the public users. Additionally, the extent to which the applicant has identified and established relationships with the partners necessary to achieve the project's goals will be evaluated.

(4) *Appropriate wildlife habitat.* The application will be evaluated to determine whether the applicant demonstrates expertise in providing technical assistance with respect to establishing and maintaining appropriate wildlife habitat on public access land.

(5) *Strengthening wildlife habitat for lands under a USDA conservation program.* The application will be evaluated to determine whether the project proposes to provide incentives to increase public hunting and other recreational access on land enrolled under a USDA conservation program, including lands enrolled in the Wetland Reserve Easement component of the Agricultural Conservation Easement Program, part 1468, subpart C of this chapter.

(6) *Additional private, Federal, State, or tribal government resources.* The application will be evaluated to determine the extent to which the support letters provided by other organizations involved with the project demonstrate specific and quantified commitments to the project. Applications that demonstrate additional resources will receive more points, all else being equal, than those that do not.

(7) *Making available the location of enrolled land.* The application will be evaluated to determine how the project proposes to make available to the public the location of the land enrolled.

(8) *Performance evaluation criteria.* The application will be evaluated to determine whether the applicant has included outcome-based performance measures.

(9) *Administrative capabilities.* The application will be evaluated to determine whether the grant applicant has a track record of administering the project or, in the absence of a track record, the capacity to administer the project. Applicants that have demonstrated capable financial systems and audit controls, personnel and program administration performance measures, and clear rules of governance will receive more points than those not evidencing this capacity.

(10) *Delivery*. The application will be evaluated to determine whether the applicant has a track record in implementing public access or similar programs or, in the absence of an actual track record, the capacity to implement a public access program. The applicant's potential for delivering an effective public access program and the expected effects of that program will also be assessed.

(11) *Work plan and budget*. The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the components of the application. Clear, logical, realistic, and efficient plans will result in a higher score. Budgets will be reviewed for completeness and whether and to what extent additional resources were committed by Federal, State, or tribal government, and private resources.

(12) *Qualifications of those performing the tasks*. The application will be reviewed to determine if key personnel have appropriate knowledge, skills, and abilities with respect to wildlife-dependent recreation including hunting or fishing on privately-held farm, ranch, and forest land, funds control, grants management, performance monitoring and evaluation, or other activities relevant to the success of the proposed public access program.

[75 FR 39140, July 8, 2010, as amended at 79 FR 44641, Aug. 1, 2014; 84 FR 19703, May 6, 2019]

§ 1455.21 Additional responsibilities of grantee.

(a) Before receiving grant funding, the grantee will be required to sign an agreement similar in form and substance to the form of agreement published within or as an appendix to the APF. The agreement will require the grantee to commit to do all of the following:

(1) Take all practicable steps to develop continuing sources of financial support from other Federal, State, tribal government, or private resources;

(2) Make arrangements for the monitoring and evaluation of the activities related to implementation of the public access program of the owners or operators that enroll farm, ranch, and forest land; and

(3) Provide an accounting for the money received by the grantee under this subpart.

(b) Grantees will be required to monitor funds or services as specified in paragraph (c) of this section, and must agree to that monitoring before grant funds are awarded.

(c) The grantee must certify that the grant funds and services will not be used for ineligible purposes. Specifically, grant funds and services may not be used to:

(1) Duplicate or replace current services; however, grant funds may be used to expand the level of effort or service beyond what is currently being provided;

(2) Pay costs of preparing the application for funding under VPA–HIP;

(3) Pay costs of the project incurred prior to the date of grant approval;

(4) Fund political activities;

(5) Pay any judgment or debt owed to the United States;

(6) Pay for the design, repair, rehabilitation, acquisition, or construction of a building or facility (including a processing facility);

(7) Purchase, rent or pay for the installation of fixed equipment, other than property identification signs;

(8) Pay for the repair of privately owned vehicles; or

(9) Pay for research and development not directly related to quantifying the performance of VPA–HIP lands enrolled with funding from VPA–HIP.

(d) Grant agreements under this part will be for a term of up to 3 years.

(e) Grantees that are States will have the grant amount reduced by 25 percent if opening dates for migratory bird hunting in the State are not consistent for residents and non-residents. This paragraph does not apply to grantees that are Tribal governments.

(f) Failure of the grantee to execute a grant agreement in a timely fashion, as determined by the CCC, will be construed to be a withdrawal from VPA–HIP.

§ 1455.30 Reporting requirements.

(a) Grantees must provide the following to NRCS:

(1) A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a periodic

basis as specified in the grant document.

(2) Annual performance reports that compare accomplishments to the objectives stated in the application, and that also:

(i) Identify all tasks completed to date and provide documentation supporting the reported results;

(ii) If the original schedule provided in the work plan is not being met, the report must discuss the problems or delays that may affect completion of the project;

(iii) List objectives for the next reporting period; and

(iv) Discuss compliance with any special conditions on the use of award funds. Reports are due as provided in paragraph (a)(1) of this section.

(3) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

(b) All reports submitted to NRCS will be held in confidence to the extent permitted by law.

(c) Grantees must comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

[75 FR 39140, July 8, 2010, as amended at 79 FR 44641, Aug. 1, 2014]

§ 1455.31 Miscellaneous.

(a) *Inspection.* Grantees must permit periodic inspection of the program operations by a CCC representative, as determined by CCC.

(b) *Performance evaluation.* CCC will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(c) *Suspend, terminate, or require refund.* CCC may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, and require refund of part or all of the grant, with interest, where CCC has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) The opening dates for migratory bird hunting in a State have been changed so as to be not consistent for residents and non-residents during the term of the grant;

(3) There is reasonable evidence that shows joint funding has not been or will not be forthcoming on a timely basis; or

(4) Such other cause as CCC identifies in writing to the grantee based on reasonable evidence (including but not limited to the use of Federal grant funds for ineligible purposes).

(d) *Advance or reimbursement.* Grantees must use the request for advance or reimbursement form, which will be provided by CCC, to request advances or reimbursements;

(e) *Appeals.* Appeals will be handled according to 7 CFR parts 11, 614, and 780.

(f) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 650. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(g) *Civil rights.* CCC prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. VPA–HIP will also be administered in accordance with all other applicable civil rights law.

(h) *Other regulations.* The grant program under this part is subject to the provisions of 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(i) *Audit.* Grantees must comply with the audit requirements of 2 CFR part 200. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

(j) *Change in scope or objectives.* The Grantee must obtain prior approval from NRCS for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, or recovery of grant funds.

(k) *Exceptions.* CCC may, in individual cases, make an exception to any requirement or provision of this part, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, that CCC determines that the application of the requirement or provision would adversely affect the Federal Government's interest.

(l) *Enforcement and refunds; liens and schemes or devices.* Grantees must comply with all conditions of the grant and any monies not spent or improperly spent must be returned immediately with interest to run at the normal rate for CCC obligations. Interest charges will be computed from the date of the CCC disbursement. Grantees must insure that parties that receive funds from the grantee comply with the grantee's application and return funds made available by the grantee where there is no such compliance. Any scheme or device to avoid any limits of this part will be considered to be a program violation with respect to any grant to which that scheme or device is related. Grant funds will be made available to the States or Tribes that are grantees under this part without regard to the claims of others, unless CCC determines otherwise.

[75 FR 39140, July 8, 2010, as amended at 79 FR 44641, Aug. 1, 2014]

PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

Subpart A—Tobacco Transition Assessments

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AUTHORITY: 7 U.S.C. 518–519a, 714b, and 714c.

SOURCE: 70 FR 7011, Feb. 10, 2005, unless otherwise noted.

Subpart A—Tobacco Transition Assessments

§ 1463.1 General.

The Commodity Credit Corporation (CCC) will levy assessments from January 1, 2005 through September 30, 2014 on certain domestic manufacturers and importers of tobacco products as provided for in this subpart in order to fund the issuance of payments made under subpart B of this part and to fund other activities authorized by Title VI of the American Jobs Creation Act of 2004. The total amount of assessments that may be collected under this part shall not exceed $10.140 billion.

§ 1463.2 Administration.

The provisions of this subpart will be administered under the general supervision of the Executive Vice President, CCC.

§ 1463.3 Definitions.

The definitions in this section shall apply for all purposes of administering the provisions of this subpart:

Act means Title VI of the America Jobs Creation Act of 2004 (Public Law 108–357).

Adjusted market share means the market share of a manufacturer of tobacco products or an importer of tobacco products adjusted to reflect such entity's share of a class of tobacco during the immediately preceding calendar year quarter. With respect to the 39th and 40th quarterly payments due on September 30, 2014, the adjusted market share will be the entity's share of a class of tobacco during the April 1–June 30, 2014 quarter.

Base period means the period July 1 through June 30 immediately preceding the beginning of a fiscal year.

CCC's point of contact means, for items physically sent to CCC, ''Fibers, Peanuts, and Tobacco Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0515, Room 3720–S, 1400 Independence Avenue, SW., Washington, DC 20250–0515'' unless otherwise specified by CCC through actual notice.

Calendar year means the period January 1 through December 31.

Class of tobacco means each of the following types of tobacco and tobacco products for which taxes are required to be paid for the removal of such into domestic commerce: cigarettes; cigars; snuff; roll-your-own tobacco; chewing tobacco; and pipe tobacco.

Domestic manufacturer of tobacco products means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the production of tobacco products under title 27 of the Code of Federal Regulations.

Fiscal year means the period October 1 through September 30.

Gross domestic volume means the volume of tobacco products removed, as defined by section 5702 of the Revenue Code, and not exempt from tax under chapter 52 of such code at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.

Importer of tobacco products means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the importation of tobacco products under title 27 of the Code of Federal Regulations.

Market share means the share of each domestic manufacturer and importer of a class of tobacco product, to the fourth decimal place, of the total volume of domestic sales of the class of tobacco product in the base period. Such sales shall be determined by CCC by using the total volume of such class of tobacco product that is removed into domestic commerce in the base period.

National assessment means the total amount of funding that CCC has determined to be necessary to collect in a year from domestic manufacturer and importer of tobacco products in order to reimburse CCC for expenditures that it will incur in the year for expenses incurred under sections 622 and 623 of the Act in making payments under subpart B of this part; losses sustained by CCC in the disposition of tobacco acquired under price support loan agreements as provided in section 641(c) of the Act; and costs incurred by CCC in the utilization of financial institutions in administering sections 622 and 623 of the Act.

Revenue Code means the Internal Revenue Code of 1986.

Tobacco Trust Fund means an account established for deposit of assessments collected under this subpart, plus interest that accrues on such assessments, to be used to implement this subpart.

[70 FR 7011, Feb. 10, 2005, as amended at 70 FR 17158, Apr. 4, 2005; 73 FR 23066, Apr. 29, 2008]

§ 1463.4 National assessment.

Annually, CCC will make a determination of a national assessment in as far in advance of when the first assessment is due as CCC determines to be practicable. Based upon the amount of assessments received and expenditures incurred in a calendar year quarter, CCC may adjust the national assessment for one or more classes of tobacco established for a particular year

with respect to succeeding calendar year quarters.

§ 1463.5 Division of national assessment among classes of tobacco.

(a) Except as provided in paragraph (b) of this section, the national assessment will be divided by CCC among each class of tobacco based upon CCC's determination of each class's share of the excise taxes paid using for all years the tax rates that applied in fiscal year 2005. The value of the excise taxes paid for each class of tobacco will be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security:

(b) For fiscal year 2005, the national assessment will be divided as follows:

(1) Cigarettes, 96.331 percent;

(2) Cigars, 2.783 percent;

(3) Snuff, 0.539 percent;

(4) Roll-your-own tobacco products, 0.171 percent;

(5) Chewing tobacco, 0.111 percent; and

(6) Pipe tobacco, 0.066 percent.

(c) For fiscal years 2006 through 2014, the division of the national assessment for each class of tobacco will be adjusted annually.

[70 FR 7011, Feb. 10, 2005, as amended at 75 FR 76923, Dec. 10, 2010]

§ 1463.6 Determination of persons liable for payment of assessments.

(a) All domestic manufacturers and importers of tobacco products are required to pay to CCC their proportionate share of a calendar year's national assessment. Such entities are those that import or manufacture tobacco products in a calendar year and are required to report to the United States Department of the Treasury or to the Department of Homeland Security the removal of tobacco products into domestic commerce under the Revenue Code or are required to pay taxes under chapter 52 of such code.

(b)(1) Such entities must provide to CCC's point of contact:

(i) Entity name; mailing address of the entity's principal place of business; an office or individual that CCC may contact for further information; an e-mail address and postal address at which they wish to receive notifications required by the Act to be made to them by CCC; and

(ii) On a monthly basis for each class of tobacco, the total amount of tobacco products, summarized by employer identification number or such other method as may be prescribed by CCC, that are required to be reported to the United States Department of the Treasury or to the Department of Homeland Security in each month beginning October 1, 2004, and ending September 30, 2014.

(2) The information required to be submitted to CCC under paragraph (b)(1) of this section must be submitted by:

(i) With respect to fiscal year 2005 activities occurring prior to February 10, 2005, by February 25, 2005; and

(ii) With respect to all other activities, on the same date the information was required to be submitted to the United States Department of the Treasury or to the Department of Homeland Security.

§ 1463.7 Division of class assessment to individual entities.

(a) In order to determine the assessment owed by an entity, that portion of the national assessment assigned to each class of tobacco will be further divided at the entity level. The amount of the assessment for each class of tobacco to be paid by each domestic manufacturer and importer of tobacco products will be determined by multiplying:

(1) With respect to each class of tobacco, the adjusted market share of such manufacturer or importer; by

(2) The total amount of the assessment for that class of tobacco for the calendar year quarter.

(b) For purposes of determining the volume of domestic sales of each class of tobacco products and for each entity, such sales shall be based upon the reports filed by domestic manufacturers and importers of tobacco with the Department of Treasury and the Department of Homeland Security and shall correspond to the quantity of the tobacco product that is removed into domestic commerce by each such entity:

(1) For cigarettes and cigars, on the number of cigarettes and cigars reported on such reports;

(2) For all other classes of tobacco, on the number of pounds of those products.

(c) In determining the adjusted market share of each manufacturer or importer of a class of tobacco products, except for cigars, CCC will determine to the fourth decimal place an entity's share of excise taxes paid of that class of tobacco product during the immediately prior calendar year quarter. With respect to cigars, CCC will determine the adjusted market share for each manufacturer or importer of a class of tobacco products based on the number of such products removed into domestic commerce.

(d) The amount of a quarterly assessment owed by a domestic manufacturer or importer of tobacco products that must be remitted to CCC by the end of a calendar year quarter is based upon the application of the manufacturer's or importer's adjusted market share to the amount of the national assessment that has been allocated to one of the six specified tobacco product sectors under §1463.5. As provided in §1463.3, this adjusted market share is determined by the actions of such manufacturer or importer in a prior calendar year quarter. Accordingly, this amount must be remitted to CCC whether or not the manufacturer or importer is engaged in the removal of tobacco or tobacco products into commerce in the calendar year quarter in which it receives notification of the amount of assessment owed to CCC.

[70 FR 7011, Feb. 10, 2005, as amended at 70 FR 17158, Apr. 4, 2005]

§1463.8 Notification of assessments.

(a) Once CCC has determined a national assessment, CCC will collect that amount on a quarterly basis from all domestic manufacturers and importers of tobacco products subject to §1463.5.

(b) 30 calendar days prior to the end of each calendar year quarter domestic manufacturers and importers of tobacco products will receive notification of:

(1) The national assessment;

(2) The percentage of the national assessment that has been allocated to each class of tobacco product and the total amount of assessments due from each such class;

(3) Any adjustments that have been from the prior fiscal year with respect to the allocation of the gross domestic volume determined for use in a fiscal year among the classes of tobacco products;

(4) An adjustment in the national assessment if CCC determines that the assessments imposed will result in insufficient funds due to changes in the amount of expenditures that CCC has determined will be made in a calendar year;

(5) The volume of gross sales of each class of tobacco that CCC has allocated to the domestic manufacturer or importer of tobacco products for the purposes of determining such entity's adjusted market share. The volume of gross sales of each class of tobacco allocated to such an entity shall correspond to the quantity of the tobacco product that is removed into domestic commerce by each such entity;

(6) The total volume of gross sales of each class of tobacco that CCC has allocated to a class of tobacco, within the gross domestic volume determined for use in a fiscal year, that was used for the purpose of determining a tobacco manufacturer's or tobacco importer's adjusted market share. The total volume of gross sales of each such class of tobacco shall correspond to the total quantity of the tobacco product that is removed into domestic commerce.

(7) For that quarter, the adjusted market share of the domestic manufacturer or importer of tobacco products;

(8) Beginning with the 2nd quarter of 2008, or as soon as practicable thereafter, the applied market share for that quarter of each other manufacturer and importer, for the applicable class of tobacco product of those manufacturers and importers that have provided such information to CCC in accordance with the provisions of §1463.6, as determined by the Deputy Administrator, Farm Service Agency.

(9) The manner in which assessments are to be remitted to CCC; and

(10) Identification of those Department of the Treasury and Department of Homeland Security forms filed by the domestic manufacturer or importer of tobacco products that are used to calculate assessments.

[70 FR 7011, Feb. 10, 2005, as amended at 70 FR 17158, Apr. 4, 2005; 73 FR 23066, Apr. 29, 2008]

§ 1463.9 Payment of assessments.

(a) Assessments under this subpart are imposed for the expenditures CCC has determined it will incur in the 2005 through 2014 calendar years. Except as provided in paragraph (c) of this section, payment of such assessments are due to CCC no later than the end of each calendar year quarter. If prior to 30 calendar days before the end of a calendar year quarter CCC has not notified an entity of the amount that is required to be remitted in that quarter, no interest will be assessed by CCC under paragraph (d) of this section until 30 calendar days have elapsed from the date CCC provided notification of the amount owed.

(b) Payments due under this subpart must be submitted to CCC by electronic fund transfer unless prior written approval has been obtained from CCC.

(c) The final two calendar year quarterly payments due to CCC under this part shall be due to CCC on September 30, 2014.

(d) Notwithstanding any other provision of this chapter, if CCC has not received payment of assessments determined to be owed at the end of a calendar year quarter, CCC will assess interest on such unpaid amount beginning on the first day of the calendar year quarter immediately following the end of such prior quarter. Such interest will be at the rate CCC assesses on delinquent debts in accordance with part 1403 of this title.

(e) With respect to funds placed in escrow that are refunded to the domestic manufacturer or importer of tobacco products due to the resolution of an appeal, interest will be paid on such amount from the date of receipt by CCC until the date of the refund. Such interest rate will be at the rate charged by the U.S. Treasury for CCC's borrowing that is in effect on the date of receipt by CCC of such funds.

§ 1463.10 Civil penalties and criminal penalties.

(a) Any person who knowingly fails to provide information required to be filed under this subpart, or provides false information under this subpart, may be subject to the penalties prescribed in 15 U.S.C. 714m, 18 U.S.C. 1003, and such other civil and criminal statutes as the United States determines to be appropriate.

(b) In addition to an action that may be taken under paragraph (a) of this section, with respect to any person who knowingly fails to provide information required to be filed under this subpart, or that provides false information under this subpart, a person may be subject to assessment of a civil penalty by CCC. Such civil penalty will be imposed by CCC taking into account the severity of the action; whether the action is of a repetitive nature; and the disruption the action has caused with respect to other parties subject to this subpart. Any such civil penalty will not exceed two percent of the value of the kind of tobacco products manufactured or imported by such entity in the fiscal year in which the violation occurred.

§ 1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute to Darlene Soto, Tobacco Transition Assessment Program Manager, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 3722, Mail Stop 0515, Washington DC 20250–0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

(b) The Executive Vice President shall assign a person to act as the hearing officer on behalf of CCC. The duty of the hearing officer will be to develop an administrative record that will provide the Executive Vice President, or a designee, with sufficient information to render a final determination on the matter in dispute. The hearing to be

conducted by the hearing officer will be an informal hearing at which the appellant may present oral and written evidence in support of the appellant's position. A copy of the rules of conduct that will be applicable to the proceeding will be provided to the appellant upon receipt of the appeal by CCC.

(c) For any appeals filed after October 1, 2014, appellants must submit all supporting documentation within 30 calendar days following the date of the initial written appeal to CCC. Any documents received after that time will not be considered by the hearing officer.

(1) The final date that entities may file an appeal is January 14, 2016.

(2) If 30 calendar days elapse following receipt by CCC of the final submission of supporting documentation by an appellant with respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, without a final administrative decision by CCC, then all administrative remedies available to the appellant will be deemed to be exhausted; except, if the 30th calendar day would fall on a weekend day or federal holiday, then the 30th calendar day will be deemed the next business day following such weekend day or federal holiday.

(d) Any domestic manufacturer or importer of tobacco products aggrieved by a determination made by CCC under this subpart may seek review of the determination upon the exhaustion of the administrative remedies provided by this part in the United States District Court for the District of Columbia, or for the district in which such importer or manufacturer has its principal place of business.

[70 FR 7011, Feb. 10, 2005, as amended at 79 FR 19464, Apr. 9, 2014]

Subpart B—Tobacco Transition Payment Program

SOURCE: 70 FR 17159, Apr. 4, 2005, unless otherwise noted.

§ 1463.100 General.

(a) The Commodity Credit Corporation (CCC) will make payments to tobacco quota holders and tobacco producers as provided in this subpart with respect to farms for which a tobacco marketing quota had been established by the Farm Service Agency (FSA). To be eligible for a payment, such person must meet all provisions of this part; submit to CCC an application provided by CCC to enter into a contract for payment; and submit other information as may be required by CCC. Payments will be made by CCC annually over a 10-year period.

(b) As provided in this part, a tobacco quota holder or tobacco producer who is not the subject of an outstanding claim established by the United States may, under the terms and conditions established by CCC and with the prior approval of CCC, enter into a successor in interest contract with another person or entity. Upon approval by CCC, all rights and obligations of the quota holder or producer, with respect to payments made by CCC under this part, will be terminated and transferred to the successor party.

(c) As provided in this part, a tobacco quota holder or tobacco producer who may, under the terms and conditions established by CCC, and with the prior approval of CCC, may assign the right to receive a payment to be made under this part by executing an assignment as provided in §1463.111.

(d) Notwithstanding any other provision of this chapter, the provisions of 7 CFR parts 723 and 1464 shall not be applicable to the 2005 and subsequent crops and the 2005 and subsequent marketing years.

§ 1463.101 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by FSA State and county committees (State and county committees).

(b) State and county committees and their representatives and employees have no authority to modify or waive provisions of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by

such county committee that is not in accordance with this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. Further, the Executive Vice-President, CCC, or designee, may modify any deadline in this subpart to the extent doing so is determined to be appropriate and consistent with the purposes of the program.

(e) A representative of CCC may execute a contract for a transition payment only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1463.102 Definitions.

The definitions in this section shall apply for all purposes of administering the Tobacco Transition Payment Program (TTPP) authorized by this subpart.

Act means the Fair and Equitable Tobacco Reform Act of 2004.

Actual marketings means tobacco that was disposed of in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons.

Actual undermarketings means the amount by which the effective quota is more than the amount of tobacco marketed.

Assignee means the person designated by a tobacco quota holder or tobacco producer on the correct CCC form to receive a payment to be made by CCC under this subpart.

Assignor means the owner of a farm, or a producer on a farm, who has been determined by CCC to be eligible for a payment under this subpart and who has elected to assign to another person on the correct CCC form, the payment to be made by CCC under this subpart.

Average production yield means, for each kind of tobacco, other than burley (type 31) and flue-cured (types 11–14), the average of the production of a kind of tobacco in a county, on a per-acre basis, for the 2001, 2002, and 2003 crop years. For quota holders only, if no records are available to provide the average production of a kind of tobacco in a county, the average yield will be the production yield established by the National Agricultural Statistical Service of the Department of Agriculture (NASS) for the 2002 marketing year for the applicable kind of tobacco.

Basic allotment means the factored allotment plus and minus permanent adjustments.

Basic quota means the factored quota plus permanent adjustments.

Base Quota Level (BQL) means the payment pounds as determined under this subpart.

Calendar year means the twelve-months from January 1 through December 31.

Claim means any amount of money determined by any Federal agency to be owed by a tobacco quota holder or a tobacco producer to the United States, or any agency or instrumentality thereof, that has been the subject of a completed debt collection activity that is in compliance with the Debt Collection Improvement Act of 1996.

Considered planted means tobacco that was planted but failed to be produced as a result of a natural disaster, as determined by CCC.

Contract means a Tobacco Transition Payment Quota Holder Contract, a Tobacco Transition Payment Producer Contract, a Tobacco Transition Payment Quota Holder Successor In Interest Contract, or a Tobacco Transition Payment Producer Successor In Interest Contract.

Contract payment means a payment made under a contract entered into under this subpart.

Dependent means an offspring child who is under 18 years of age.

Disaster lease means, as approved by FSA, a written transfer by lease under certain natural disaster conditions of flue-cured or burley tobacco when the

transferring farm has suffered a loss of production due to drought, excessive rain, hail, wind, tornado, or other natural disasters. A disaster transfer of flue-cured tobacco must have occurred after June 30 and on or before November 15. A disaster transfer of burley tobacco must have occurred after July 1 and on or before February 16 of the following calendar year.

Effective allotment means the basic farm allotment plus or minus temporary adjustments.

Effective quota means the current year farm marketing quota plus or minus any temporary quota adjustments.

Effective undermarketings means the smaller of the actual undermarketings or the sum of the previous year's basic quota plus pounds of quota temporarily transferred to the farm for the previous year.

Eligible quota holder means only a person who, as of October 22, 2004, has either a fee simple interest or life estate interest in the farm for which FSA established a farm basic marketing quota for the 2004 marketing year. An eligible quota holder does not include any other person who: claims a lien, security interest or other similar equitable interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; has a remainder interest or any other contingent interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; or who may have caused any such marketing quota to have been transferred to the farm.

Eligible tobacco producer means an owner, operator, landlord, tenant, or sharecropper who shared in the risk of producing tobacco on a farm where tobacco was produced, or considered planted, pursuant to a tobacco poundage quota or acreage allotment assigned to the farm for the 2002, 2003 or 2004 marketing years and who otherwise meets the requirements in § 1463.104.

Experimental tobacco means tobacco grown by or under the direction of a publicly-owned agricultural experiment station for experimental purposes.

Factored allotment means allotment that has been factored to equate it to the 2002 basic allotment level.

Factored quota means quota that has been factored to equate it to the 2002 basic quota level.

Family member means a parent; grandparent or other direct lineal ancestor; child or other direct lineal descendent; spouse; or sibling of a tobacco quota holder or tobacco producer.

Farm means a farm as defined in part 718 of this title.

Fiscal year means the twelve-month period from October 1 through September 30.

Marketing year means, for flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year. For kinds of tobacco other than flue-cured, the period beginning October 1 of the current year and ending September 30 of the following year.

NASS means the National Agricultural Statistics Service of USDA.

New farm means a farm for which a basic marketing quota was established for the 2003 or 2004 year from the national reserve that is set aside for such purposes from the national marketing quota established for the applicable year for the kind of tobacco.

Overmarketings means the pounds by which the pounds marketed exceed the effective farm marketing quota.

Permanent quota adjustments means adjustments made by FSA under part 723 of this title for:

(1) Old farm adjustments from reserve;

(2) Pounds of quota transferred to the farm from the eminent domain pool;

(3) Pounds of quota transferred to or from the farm by sale; or

(4) Pounds of forfeited quota.

Secretary means the Secretary of the United States Department of Agriculture.

Share in the risk of production means having a direct financial interest in the successful production of a crop of tobacco through ownership of a direct share in the actual proceeds derived from the marketing of the crop, which share is conditional upon the success of that marketing.

Successor party means the means the person who has assumed all rights and

obligations of a quota holder or tobacco producer arising under this part by executing a TTPP contract.

Temporary quota adjustments means adjustments made by FSA under part 723 of this title for:

(1) Effective undermarketings;

(2) Overmarketings from any prior year;

(3) Reapportioned quota from quota released from farms in the eminent domain pool;

(4) Quota transferred by lease or by owner, for all kinds of tobacco except flue-cured and cigar tobacco; except for flue-cured disaster lease;

(5) Violations of the provisions of part 723 of this title and part 1464 of this chapter.

Tobacco means the following kinds of tobacco: Burley tobacco (type 31); cigar-filler and cigar binder tobacco (types 42, 43, 44, 53, 54, and 55); dark air-cured tobacco (types 35 and 36), fire-cured tobacco (types 21, 22 and 23); flue-cured tobacco (types 11, 12, 13 and 14); and Virginia sun-cured tobacco (type 37).

TTPP effective quota means effective quota plus or minus temporary adjustments because of disaster lease and transfer and before adjustment to the 2002 level for establishment of BQL.

United States includes any agency and instrumentality thereof.

§ 1463.103 Eligible quota holder.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible quota holder, as defined in § 1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible quota holder.

§ 1463.104 Eligible tobacco producer.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible tobacco producer, as defined in § 1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title and the controlled substance provisions of part 718 of this title shall be applicable to payments made under this part to an eligible tobacco producer. However, the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible tobacco producer.

(c) For purposes of determining if an eligible tobacco producer has shared in the risk of producing a crop in the 2002, 2003, or 2004 crop years, CCC will consider evidence presented by a producer that includes, but is not limited to: written leases; contracts for the purchase of tobacco; crop insurance documents; or receipts for the purchase of items used in the production of tobacco.

§ 1463.105 Base quota levels for eligible quota holders.

(a) The BQL is determined separately for each kind of tobacco for each farm for which a 2004 basic marketing year quota was established under part 723 of this title. Any marketing quota assigned by FSA to a new farm in 2003 or 2004, other than through transfer from another farm, shall not be considered when determining the BQL.

(b) For burley tobacco quota holders BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.071295. (NOTE: The factor adjusts the 2004 basic quota to the 2002 basic quota level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owners.)

(c) For flue-cured tobacco quota holders the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.23457. (NOTE: The factor adjusts the 2004 basic quota to the 2002 level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL

must be distributed among the tract quota holders by the tract owner.)

(d) For quota holders of all other kinds of tobacco the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The basic allotment established for the farm in 2002 multiplied by the county average production yield. The following NASS yields are to be used for any county without production:

(i) Fire-cured (type 21)—1746 lbs.

(ii) Fire-cured (types 22–23)—2676 lbs.

(iii) Dark Air-cured (types 35–36)—2475 lbs.

(iv) Virginia Sun-cured (type 37)—1502 lbs.

(v) Cigar Filler/Binder (types 42–44, 54, 55)—2230 lbs.

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(e)(1) CCC will divide the BQL for the farm between the parties to the agreement as CCC determines to be fair and equitable, taking into consideration the proportionate amounts of cropland sold, if:

(i) On or before October 22, 2004, the owner of a farm had entered into an agreement for the sale of all or a portion of a farm for which a farm marketing quota was established for the 2004 marketing year; and

(ii) Such agreement had not been fulfilled or terminated prior to that date; and

(iii) The parties to the agreement are unable to agree to the disposition of the contract payment to be made with respect to the farm.

(2) If, on or before October 22, 2004, the owner of a farm had entered into an agreement for the permanent transfer of all or a portion of a tobacco marketing quota and the transfer had not been completed by such date, the owner of the farm to which such quota was to be transferred shall be considered to be the owner of the marketing quota for the purposes of this subpart. The BQL's for the transferring farm and the receiving farm will be adjusted to reflect this transfer.

(f) Any tobacco marketing quota preserved under part 1410 of this chapter as the result of the enrollment of a farm in the Conservation Reserve Program shall be included in the determination of the BQL of the farm.

§ 1463.106 Base quota levels for eligible tobacco producers.

(a) BQL is determined separately, for each of the years 2002, 2003 and 2004, for each kind of tobacco and for each farm for which a 2002 farm marketing quota had been established under part 723 of this title.

(b) The BQL for producers of burley tobacco is established as follows:

(1) The 2002-crop year BQL for burley producers is the 2002 effective quota pounds actually marketed, adjusted for disaster lease and transfer, and considered-planted undermarketings and overmarketings. The BQL is then multiplied by the producer's share in the 2002 crop to determine the producer's 2002 BQL. The adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are made as follows:

(i) Disaster-leased pounds are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm;

(ii) Considered-planted pounds are added to the farm's actual marketings, and includes only undermarketings that were not part of the farm's 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.12486 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for burley producers is the 2003 effective quota pounds actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases are added to the marketings of the transferring farm and deducted from the marketings of receiving farm.

(ii) Considered-planted pounds are added to the farm's actual marketings, and includes only undermarketings that were not part of the farm's 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.071295 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

Step	Calculation
1	Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm's undermarketings by the transferring farm's effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.
2	Multiply the 2003 marketings remaining after Step 1 times 1.12486 (the 2003-BQL adjustment factor).
3	Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.
4	Multiply the sum from Step 3 times the producer's share in the 2003 crop to determine the producer's 2003 BQL.

(3) The 2004-crop year BQL for burley producers is the 2004 effective quota before disaster lease and transfer is calculated as follows:

Step	Calculation
1	Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm's undermarketings by the transferring farm's effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.
2	Multiply the 2004 effective quota remaining after Step 1 times 1.071295 (the 2004 BQL adjustment factor).
3	Multiply the undermarketings that were subtracted in Step 1 times 1.12486 (the 2003 BQL adjustment factor).
4	Add the effective quota from Step 2 to the undermarketings in Step 3 to determine the farm 2004 BQL.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to determine the producer's 2004 BQL.

(c) The BQL for producers of flue-cured tobacco is established by year, as follows:

(1) The 2002-crop year BQL for flue-cured producers is the effective 2002 quota actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings. The BQL is then multiplied by the producer's share in the 2002 crop to determine the producer's 2002 BQL. Adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are calculated as follows:

(i) Disaster-leased pounds are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm;

(ii) Considered-planted pounds are added to the farm's actual marketings, and include only undermarketings that were not part of the farm's 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.10497 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for flue-cured producers is the 2003 effective quota actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm.

(ii) Considered-planted pounds are added to the farm's actual marketings, and includes only undermarketings that were in not part of the farm's 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.23457 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

Step	Calculation
1	Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations.
2	Multiply the 2003 marketings remaining after Step 1 times 1.10497 (the 2003 BQL adjustment factor).
3	Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.
4	Multiply the sum from step 3 times the producer's share in the 2003 crop to determine the producer's 2003 BQL.

(3) The 2004-crop year BQL for flue-cured producers is the 2004 effective quota before disaster lease and transfer. The 2004 BQL is calculated as follows:

Step	Calculation
1	Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations.
2	Multiply the 2004 effective quota remaining after Step 1 times 1.23457 (the 2004 BQL adjustment factor).
3	Multiply the undermarketings that were subtracted in Step 1 times 1.10497 (the 2003 BQL adjustment factor).
4	Add the effective quota from Step 2 to the undermarketings in Step 3 to determine the farm 2004 BQL.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to determine the producer's 2004 BQL.

(d) The BQL for producers of cigar filler and binder tobacco is established by years, as follows:

(1) The 2002-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2002 special tobacco combination acres times the 2002-equivalence factor of 1.000.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2002 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2002 crop to get the producer 2002 BQL.

(2) The 2003-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.
2	Multiply any 2003 special tobacco combination acres times the 2003 BQL adjustment factor of 0.8929.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2003 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2003 crop to get the producer 2003 BQL.

(3) The 2004-crop year BQL for cigar-filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2004 special tobacco combination acres times the 2004 BQL adjustment factor of 0.9398.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2004 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to get the producer 2004 BQL.

(e) The BQL's for producers of all kinds of tobacco other than burley, flue-cured and cigar filler and binder, are established by year, as follows.

(1) The 2002-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2002 farm base pounds total.
2	Multiply any 2002 special tobacco combination acres times the farm's average yield for 2001, 2002, and 2003 to get the 2002 special tobacco combinations pounds total.
3	Add the sum from Step 1 to the sum from Step 2.
4	Multiply any 2002 acres leased to or from the farm times the farm's average yield for 2001, 2002, and 2003 to get the 2002 lease pounds total. Then, to the sum from either: (i) Step 3, add pounds leased to the farm to get the farm 2002 BQL total (ii)Step 3, subtract pounds leased from the farm to get the farm 2002 BQL total.

Step	Calculation
5	Multiply the result from Step 4 times the producer's share in the 2002 crop to get the producer 2002 BQL.

(2) The 2003-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.
2	Multiply any 2003 special tobacco combinations acres times the applicable 2003 BQL adjustment factor: (i) Fire-cured (type 21)—1.0000 (ii) Fire-cured (types 22–23)—.980392 (iii) Dark Air-cured (35–36)—.952381 (iv) Virginia Sun-cured (type 37) 1.0000
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3.
5	Multiply any 2003 acres leased times the applicable 2003 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.980392 (iii) Dark Air-cured (35–36)—.952381 (iv) Virginia Sun-cured (type 37) 1.0000
6	Multiply the sum from Step 5 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 lease pounds total.
7	To the sum from Step 4 either: (i) Add pounds from Step 6 leased to the farm to get the farm 2003 BQL total (ii) Subtract pounds from Step 6 leased from the farm to get the farm 2003 BQL total.
8	Multiply the sum from Step 7 times the producer's share in the 2003 crop to get the producer 2003 BQL total.

(3) The 2004-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2004 special tobacco combinations acres times the applicable 2004 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.951837 (iii) Dark Air-cured (35–36)—.94264 (iv) Virginia Sun-cured (type 37) 1.0000
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3.
5	Multiply any 2004 acres leased times the applicable 2004 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.951837 (iii) Dark Air-cured (35–36)—.92464 (iv) Virginia Sun-cured (type 37) 1.0000
6	Multiply the sum from Step 5 times the farm's average yield for 2001, 2002, and 2003 to get the 2004 lease pounds total.
7	To the sum from Step 4 either: (i) Add pounds from Step 6 leased to the farm to get the farm 2004 BQL total (ii) Subtract pounds from Step 6 leased from the farm to get the farm 2004 BQL total.
8	Multiply the sum from Step 7 times the producer's share in the 2004 crop to get the producer 2004 BQL total.

§ 1463.107 Payment to eligible quota holders.

(a) The total amount of contract payments that may be made to an eligible quota holder shall be the product obtained by multiplying:

$7.00 per pound × the BQL for the quota holder as determined under § 1463.105 for each kind of tobacco

(b) During each of the fiscal years 2005 through 2014, CCC will make a payment to each eligible quota holder in an amount equal to 10 percent of the total amount due under a contract entered into under this subpart, except that in the case an application was filed after June 17, 2005, the applicant will receive only the TTPP payments that have not been made as of the date the contract is approved. However, in

order for the contract participant to receive the 2005 TTPP payment an application to enter into a TTPP contract must be filed no later than June 17, 2005. CCC may, in its discretion, extend any deadline set forth in this paragraph. However, CCC will make the FY 2005 payment between June and September of 2005, and subsequent payments will be made in January, to the extent practicable, of each FY.

§ 1463.108 Payment to eligible tobacco producers.

(a) Subject to paragraph (b) of this section, the total amount of contract payments that may be made to an eligible tobacco producer shall be the product obtained by multiplying:

$3.00 per pound × the BQL for the producer determined under § 1463.106 for each kind of tobacco

(b) Payments to an eligible producer shall be equal to:

(1) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in all of the 2002, 2003, and 2004 marketing years, 100 percent of the rate specified in paragraph (a) of this section;

(2) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in any two of the 2002, 2003, and 2004 marketing years, ⅔ of the rate specified in paragraph (a) of this section; and

(3) For an eligible producer that produced tobacco that was marketed, or considered by CCC as planted under a marketing quota in any one of the 2002, 2003, and 2004 marketing years, ⅓ of the rate specified in paragraph (a) of this section.

(c) During each of the fiscal years 2005 through 2014, CCC will make a payment to each eligible producer in an amount equal to 10 percent of the total amount due under a contract entered into under this subpart except that in the case an application was filed after June 17, 2005, the applicant will receive only the TTPP payments that have not been made as of the date the contract is approved. However, in order for the contract participant to receive the 2005 TTPP payment, an application to enter into a TTPP contract must be filed no later than June 17, 2005. CCC may, in its discretion, extend any deadline set forth in this paragraph. However, CCC will make the FY 2005 payment between June and September of 2005, and subsequent payments will be made in January, to the extent practical, of each FY.

§ 1463.109 Contracts.

(a) CCC will enter into a contract with eligible tobacco quota holders and producers. To the extent a person has filed such a contract with CCC, but a final administrative decision has not been made with respect to such person's status as an eligible quota holder or tobacco producer prior to the final enrollment date, CCC will enter into such a contract only upon the issuance of a final determination of eligibility and the passing of any deadline for any administrative appeal under parts 780 and 11 of this title.

(b)(1) If contracts or other written claims are provided to CCC by June 3, 2005, by two or more persons with respect to the same tobacco BQL used to calculate a program payment, CCC will not issue such payment until CCC has determined the eligibility status of each claimant.

(2) If CCC has made a payment to a person after June 3, 2005, a person who is not an eligible holder or producer, as identified on FSA records, for such farm, or claims to be an eligible tobacco holder or producer and submits a contract or other written claim with CCC for the same quota used to issue the initial payment, CCC will issue no further payments for such farm until CCC has determined the eligibility status of each person who has submitted a contract or other written claim for such farm and the occurrence of the repayment of the initial payment made by CCC.

§ 1463.110 Misrepresentation and scheme or device.

A person must refund all payments received on all contracts entered into under this subpart, plus interest as determined in accordance with part 1403 of this chapter, and pay to CCC liquidated damages as specified in the

contract, if CCC determines the person has:

(a) Erroneously represented any fact affecting a program determination made in accordance with this subpart;

(b) Adopted any scheme or device that tends to defeat the purpose of the program; or

(c) Made any fraudulent representation affecting a program determination made in accordance with this subpart.

§ 1463.111 Offsets and assignments.

(a) TTPP payments made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the tobacco quota, tobacco marketing allotment, or the farm for which a tobacco quota had been established under part 723 of this title by any creditor or any other person.

(b) The provisions of part 1404 of this title shall not apply to this part.

(c) A quota holder or tobacco producer who is eligible to receive a payment under this part may assign a payment, or a portion thereof, to be made under this part to another person using the correct CCC form. Such an assignment will become effective upon approval by CCC. In order to provide for the orderly issuance of payments under this part, CCC may limit, in its sole discretion, the number of assignments that may be made with respect to a contract.

(d)(1) CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the assignment, based on the discount rate established for such payments by CCC, CCC will not approve any assignment other than to:

(i) A family member; or

(ii) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(2) The discount rate established by CCC will be determined by adding 200 basis points to the prime lending rate, as determined by CCC. If this sum is a fraction of a number, CCC will round the discount rate to the nearest whole number. Rounding of a half percent will be to the next higher whole number.

(e) CCC will issue a payment to an assignee only to the extent and amount of payment that CCC would otherwise have issued to the quota holder or producer in the absence of the assignment. In accordance with part 1403 of this title, any claim owed by the assignor to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the assignee.

(f) CCC will report to the Internal Revenue Service any payment assigned under this section as income earned by the assignor.

§ 1463.112 Successor in interest contracts.

(a) A quota holder or tobacco producer who is eligible to receive a payment under this part, and for whom a claim has not been established by the United States, may enter into a successor in interest contract with another party using the correct CCC form. Such successor in interest contract will become effective upon approval by CCC, and will not include the 2005 payment. Only one such successor in interest contract may be entered into by a quota holder or tobacco producer with respect to a farm for each kind of tobacco.

(b) Annually, CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. This discount rate will be determined as provided in §1463.111(d)(2). Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the successor in interest or contract, based on the discount rate established for such payments by CCC,

CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(c) CCC will issue a payment, except the 2005 payment, to a successor party only if such party is otherwise in compliance with all other applicable regulations, which includes for successors to producer contracts only the wetlands and highly erodible land provisions of part 12 of this chapter. In accordance with part 1403 of this title, any claim owed by the successor party to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the successor party.

(d) CCC will report to the Internal Revenue Service any payment made under a successor in interest contract as income earned by the successor party.

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.114 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this subpart in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart C—Miscellaneous Provisions

§ 1463.201 Refunds of importer assessments.

Assessments paid on imported flue-cured or burley tobacco under sections 106A and 106B of the Agricultural Act of 1949 with respect to imports in the 2004 and prior marketing years may be refunded by CCC in accordance with the provisions of 7 CFR 1464.105 that were in effect prior to March 30, 2005, so long as such request for refunds are filed in accordance with such part no later than:

(a) August 1, 2005 for flue-cured tobacco; and

(b) November 1, 2005 for burley tobacco.

[70 FR 17159, Apr. 4, 2005]

PART 1464—REGIONAL CONSERVATION PARTNERSHIP PROGRAM

Subpart A—General Provisions

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3871 *et seq*.

SOURCE: 85 FR 8137, Feb. 13, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 1464.1 Applicability.

(a) The purposes of the Regional Conservation Partnership Program (RCPP) are as follows:

(1) Carry out eligible activities to further the conservation, protection, restoration, and sustainable use of soil, water (including sources of drinking water and ground water), wildlife, agricultural land, and related natural resources on eligible land on a regional or watershed scale;

(2) Encourage eligible partners to cooperate with producers in—

(i) Meeting or avoiding the need for national, State, and local natural resource regulatory requirements related to production on eligible lands, including through alignment of partnership projects with other national, State, and local agencies and programs addressing similar natural resource or environmental concerns, and

(ii) Implementing projects that will result in the adoption, installation, and maintenance of eligible activities that affect multiple agricultural or nonindustrial private forest operations on a local, regional, State, or multistate basis;

(3) Encourage flexible and streamlined delivery of conservation assistance to producers through partnership agreements; and

(4) Engage producers and eligible partners in conservation projects to achieve greater conservation outcomes and benefits for producers than would otherwise be achieved.

(b) Through RCPP, NRCS provides technical and financial assistance to implement eligible activities through partnership and supplemental agreements with eligible partners and program contracts with producers.

(c) RCPP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Each program contract, partnership agreement, and supplemental agreement is subject to the regulations in place on the date it is executed.

§ 1464.2 Administration.

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out RCPP. Accordingly, each reference to NRCS in this part also refers to CCC funds, facilities, and authorities where applicable.

(b) No delegation in this part to lower organizational levels will preclude the Chief of NRCS from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part.

(c) NRCS may use other agency-wide authorities, such as 16 U.S.C. 3842 and 31 U.S.C. 1535, to enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this part.

(d) To assist in the implementation of the program, the Chief may waive the applicability of the limitation in section 1001D of the Food Security Act of 1985 for participating producers if the Chief determines that the waiver is necessary to fulfill the objectives of the program. Section 1001D of the Food Security Act of 1985 does not apply to eligible partners.

(e) NRCS will identify in each State a program coordinator who will serve as the primary point of contact for programmatic implementation of RCPP in that State.

(f) NRCS will establish guidance to assist eligible partners with quantifying conservation benefits of RCPP implementation. Due to the diversity of natural resource issues addressed by an RCPP project and the diversity of conservation activities that a project may undertake, NRCS will work with each partner to develop project-specific outcome approach that will be included in the partnership agreement.

§ 1464.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, that is—

(1) Under the effective control of the producer at the time the producer applies for a program contract; and

(2) That is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

Applicant means a producer who has requested in writing to participate in RCPP.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who has not materially and substantially operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has materially and substantially operated a farm, ranch, or NIPF for not more than 10 consecutive years, subject to the following conditions:

(1) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch, and no member may have materially and substantially operated a farm, ranch, or NIPF for more than 10 consecutive years, and material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, USDA, or designee.

Conservation benefits means the improvements in the status of resource concerns, priority resource concerns, and similar project goals resulting from the implementation of eligible activities in an RCPP project area.

Covered program means the—

(1) Agricultural Conservation Easement Program administered under 7 CFR part 1468;

(2) Environmental Quality Incentives Program administered under 7 CFR part 1466;

(3) Conservation Stewardship Program administered under 7 CFR part 1470, except for the Grassland Conservation Initiative set forth in section 1240L–1 of the Food Security Act of 1985;

(4) Healthy Forests Reserve Program administered under 7 CFR part 625;

(5) Watershed protection and flood prevention programs administered under 7 CFR part 622, except the Watershed Rehabilitation Program set forth in 16 U.S.C. 1012; and

(6) Conservation Reserve Program administered under 7 CFR part 1410.

Critical conservation area (CCA) means a geographical area designated by the Secretary of Agriculture that contains a critical conservation condition that can be addressed through the program.

Effective control means possession of the land by ownership, written lease, or other legal agreement and authority to act as decision maker for the day-to-day management of the operation from the time of application and for the duration of the program contract or applicable terms of a supplemental agreement.

Eligible activity means a practice, activity, land rental, agreement, easement, or related conservation measure that is available under the statutory authority for a covered program, as determined by NRCS.

Eligible land means any land that NRCS determines is eligible under §1464.5.

Eligible partner means an agency, organization, or other entity specified in §1464.5 that NRCS determines the appropriate authority, expertise, and resources necessary to carry out partnership responsibilities.

Historically underserved producer means a person, joint operation, Indian Tribe, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher.

Indian Tribe means any Indian Tribe, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Lead partner means an eligible partner who is the primary signatory of a partnership agreement with NRCS and is identified as the lead partner in that agreement.

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law that—

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Limited resource farmer or rancher means:

(1) A person who:

(i) Has direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years (adjusted for inflation using the Prices Paid by Farmer Index as compiled by USDA's National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Liquidated damages means a sum of money stipulated that a participant agrees to pay NRCS if the participant fails to fulfill the terms of the program contract. The sum represents an estimate of the expenses incurred by NRCS to service the program contract and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Natural Resources Conservation Service (NRCS) is an agency of the USDA, which has responsibility for administering RCPP using the funds, facilities, and authorities of the CCC.

Nonlead partner means an eligible partner, other than a lead partner, who has entered into a supplemental agreement with NRCS consistent with the terms of a partnership agreement.

Nonindustrial private forest land (NIPF) means rural land, as determined by NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, acequia, or other private legal entity that has definitive decision-making authority over the land.

Participant means a person, legal entity, joint operation, or Indian Tribe who has applied for participation and is receiving a financial assistance payment or is responsible for implementing the terms and conditions of a program contract.

Partnership agreement means a programmatic agreement between NRCS and a lead partner.

Person means a natural person and does not include a legal entity.

Priority resource concern means a natural resource concern located in a CCA that can be addressed through:

(1) Water quality improvement, including source water protection, through measures such as reducing erosion, promoting sediment control, or addressing nutrient management activities affecting large bodies of water of regional, national, or international significance;

(2) Water quantity improvement, including protection or improvement relating to:

(i) Drought;

(ii) Ground water, surface water, aquifer, or other water sources; or

(iii) Water retention and flood prevention;

(3) Wildlife habitat restoration to address species of concern at a Federal, State, or local level; and

(4) Other natural resource improvements, as determined by the Chief, within the CCA.

Producer means a person, legal entity, joint operation, or Indian Tribe who NRCS determines is:

(1) Engaged in agricultural production or forestry management on the agricultural operation; or

(2) The landowner of eligible land for purposes of a program contract or associated supplemental agreement, as determined by NRCS.

Program means the Regional Conservation Partnership Program (RCPP) administered by NRCS under this part.

Program contract means a binding agreement under the program for the transfer of assistance from NRCS to the producer to compensate the producer for the implementation of eligible activities that specifies the rights and obligations of any producer participating in the program.

Project resource concern means a specific resource concern set out in a partnership agreement that is of special importance or significance for the purposes of that partnership agreement.

Proposal means an offer submitted by an eligible partner for consideration and ranking for selection by NRCS to enter into a partnership agreement.

RCPP plan of operations means the document that identifies the location and timing of eligible activities that the participant agrees to implement on eligible land.

Resource concern means a specific natural resource problem that is likely to be addressed successfully through the implementation of the eligible activities.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

State Technical Committee means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

Supplemental agreement means a legal document between NRCS and an eligible lead or nonlead partner that is subject to the terms of a partnership agreement and which furthers the purposes of the partnership agreement.

Technical service provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by USDA to assist in program implementation through a supplemental agreement or otherwise through a procurement contract, contribution agreement, or cooperative agreement with USDA.

Veteran farmer or rancher means a producer who meets the definition in section 2501(a)(7) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)(7)).

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.4 Funding pool allocations.

(a) Of the funds made available for the program, NRCS will allocate:

(1) Fifty percent of the funds to projects based on a State or multistate competitive process; and

(2) Fifty percent of the funds to projects for the CCAs designated by the Secretary.

(b) NRCS will allocate funds under the funding pools identified under paragraph (a) of this section to projects selected on a competitive basis pursuant to partnership agreement proposals submitted under the requirements of subpart B of this part.

§ 1464.5 Program requirements.

(a) *General requirements.*

(1) Program participation is voluntary.

(2) NRCS and lead partners enter into partnership agreements that identify the purposes and scope of RCPP projects under the framework of a partnership agreement.

(3) NRCS and lead partners enter into supplemental agreements to facilitate assistance to producers.

(4) NRCS enters into program contracts with producers to provide program assistance to eligible producers to implement eligible activities on eligible land.

(5) NRCS may enter into an alternative funding arrangement with a lead partner for the lead partner to deliver program assistance directly to producers in accordance with §1464.25 of this part.

(b) *Partner eligibility.* An eligible partner may include:

(1) An agricultural or silvicultural producer association or other group of producers;

(2) A State or unit of local government, including a conservation district;

(3) An Indian Tribe;

(4) A farmer cooperative;

(5) An institution of higher education;

(6) A water district, irrigation district, acequia, rural water district or association, or other organization with specific water delivery authority to producers on agricultural land;

(7) A municipal water or wastewater treatment entity;

(8) An organization or entity with an established history of working cooperatively with producers on agricultural land, as determined by the Secretary, to address—

(i) Local conservation priorities related to agricultural production, wildlife habitat development, and NIPF management; or

(ii) Critical watershed-scale soil erosion, water quality, sediment reduction, or other natural resource concerns; or

(9) An eligible entity as identified by NRCS pursuant to 7 CFR part 1468.

(c) *Producer eligibility.* To be eligible to receive payments or benefits under the program, each producer must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Meet the adjusted gross income payment limitations under part 1400 of this chapter unless waived by the Chief;

(3) Have effective control of the land;

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information that verifies the producer's status as a historically underserved producer, compliance with part 12 of this title, and compliance with adjusted gross income payment eligibility as established by part 1400 of this chapter; and

(5) For producers operating as a legal entity or joint operation, provide a list of all members of the legal entity or joint operation and embedded entities along with each members' tax identification numbers and percentage interest in the entity. However, where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(d) *Eligible land.* Land may be considered eligible for enrollment in RCPP if NRCS determines that:

(1) The land is private or Tribal agricultural land, nonindustrial private forest land, or associated land on which an eligible activity would help achieve the conservation benefits defined for an approved project; or

(2) The land is publicly owned agricultural land or associated land and the enrollment of such land is—

(i) Appropriate for the type of eligible activity, and

(ii) The eligible activity to be implemented on the public land is necessary and will contribute meaningfully to achieving conservation benefits consistent with an approved project.

(e) *Eligible activities.* (1) In each partnership agreement, NRCS will identify the eligible activities that are available to producers and landowners through the project. Eligible activities may include land management, land rental activities, easements, or watershed type projects. Projects may use more than one type of eligible activity.

(2) NRCS may approve interim conservation practice standards or activities if—

(i) New technologies or management approaches that provide a high potential for optimizing conservation benefits have been developed; and

(ii) The interim conservation practice standard or activity incorporates the new technologies and provides financial assistance for pilot work to evaluate and assess the performance, efficiency, and effectiveness of the new technology or management approach.

(f) *Technical service provision.* (1) NRCS may use the services of a qualified TSP, including a qualified eligible

partner, in meeting its responsibilities for technical assistance.

(2) Producers or eligible partners may use technical services from qualified personnel of other Federal, State, and local agencies, Indian Tribes, or individuals who are certified as TSPs under 7 CFR part 652.

(3) Technical services provided by qualified personnel not affiliated with USDA may include but are not limited to: Conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and other program implementation services as identified by NRCS.

(4) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving RCPP payments.

[85 FR 8137, Feb. 13, 2020, as amended at 85 FR 15051, Mar. 17, 2020]

Subpart B—Partnership Agreements

§ 1464.20 Proposal procedures.

(a) NRCS will:

(1) Periodically announce opportunities through a simplified competitive process for eligible partners to submit proposals for partnership agreements; and

(2) Make public the criteria that will be used to evaluate proposals for partnership agreements in each announced project selection opportunity, which may include whether NRCS will consider alternative funding arrangements or grant agreements during the selection opportunity or whether proposals seeking alternative funding arrangements or grant agreements will have a separate selection opportunity. These criteria will relate to four principle categories: Impact, partner cash and in-kind contribution, innovation, and project management.

(b) A partnership agreement proposal submitted by the eligible partner must include the following:

(1) The scope of the proposed project, including one or more conservation benefits that the project must achieve;

(2) A plan for monitoring, evaluating, and reporting on progress made toward achieving the project's conservation objectives;

(3) The estimated RCPP funding and other program resources requested for the project including any advance technical assistance for outreach in the project area;

(4) Whether the eligible partner is requesting NRCS to consider the proposal for funding under an alternative funding arrangement or grant agreement under § 1464.25;

(5) Each eligible partner collaborating to achieve project objectives, including their roles, responsibilities, capabilities, and contribution; and

(6) Other information NRCS may identify as necessary to evaluate and select proposals.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.21 Ranking considerations and proposal selection.

(a) *Final selection.* NRCS will rank and select proposals for partnership agreements pursuant to the evaluation criteria listed in 1464.20(a)(2).

(b) *Priority to certain proposals.* NRCS may give a higher priority to proposals for partnership agreements that—

(1) Assist producers in meeting or avoiding the need for a natural resource regulatory requirement;

(2) Have a high percentage of producers in the area to be covered by the agreement;

(3) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or national efforts;

(4) Build new partnerships with local, State, and private entities to include a diversity of stakeholders in the project;

(5) Deliver a high percentage of applied conservation to achieve conservation benefits and address the priority resource concern for a designated CCA;

(6) Implement the project consistent with existing watershed, habitat, or other area restoration plans;

(7) Provide innovation in conservation methods and delivery, including outcome-based performance measures and methods;

(8) To a significant extent involve—

(i) Historically underserved producers;

(ii) A community-based organization comprising, representing, or exclusively working with historically underserved producers;

(iii) Developing an innovative conservation approach or technology specifically targeting historically underserved producers' unique needs and limitations; or

(iv) An 1890 or 1994 land grant institution (7 U.S.C. 3222 *et seq.*), Hispanic-serving institution (20 U.S.C. 1101a), or other minority-serving institution, such as an historically Black college or university (20 U.S.C. 1061), a tribally controlled college or university (25 U.S.C. 1801), or Asian American and Pacific Islander-serving institution (20 U.S.C. 1059g); or

(9) Meet other factors that are important for achieving the purposes of the program, as determined by NRCS.

(c) *Proposals in CCAs.* (1) NRCS will select proposals for partnership agreements within CCAs that address one or more priority resource concerns for which the CCA is designated.

(2) NRCS will identify the designated CCAs and publish the priority resource concerns for each CCA.

(3) NRCS will identify the priority resource concerns and associated ranking criteria in any announcement under § 1464.20.

(4) Lands outside of a CCA are not eligible for consideration under the CCA funding pool, even where such land may influence resource concerns within the CCA.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.22 Partnership agreements.

(a) *In general.* Upon selection of a proposal for partnership agreement, NRCS will work with the eligible partner to develop the specifics of the partnership agreement. NRCS may offer a reduced amount of program assistance from that requested in the proposal for a partnership agreement or negotiate other project details.

(b) *Duration.* A partnership agreement between NRCS and a lead partner will be for a period of time:

(1) Not to exceed 5 years; or

(2) That is longer than 5 years if the longer period of time is necessary to meet the objectives of the program, as determined by NRCS.

(c) *Extension.* A partnership agreement, including a renewal of a partnership agreement, may be extended not more than one time for a period of time not longer than 12 months, as determined by NRCS.

(d) *Requirements.* The partnership agreement between NRCS and a lead partner will:

(1) Specify the scope of a project, including:

(i) One or more conservation benefits that the project will achieve;

(ii) The eligible activities on eligible land to be conducted under the project to achieve conservation benefits;

(iii) The implementation timeline for carrying out the project, including any interim milestones;

(iv) The local, State, multistate, or other geographic area covered; and

(v) The planning, outreach, implementation, and assessment to be conducted.

(2) Identify the outreach and education to producers for potential participation in the project;

(3) Authorize the lead partner, at the request of a producer, to act on behalf of a producer participating in the project in applying for assistance under subpart C of this part;

(4) Identify the significant contribution to the project costs by the lead partner, including any direct or indirect funding or in-kind support that will be contributed to help achieve the project objectives;

(5) Define the conservation benefits and other outcomes to be achieved by the project including the impact to any priority or project resource concern;

(6) Require the lead partner to assess periodically the progress made by the project in achieving the defined conservation benefits and outcomes;

(7) Require the lead partner to report to NRCS at the conclusion of the project on the project's results and funding leveraged;

(8) Set forth the total amount of financial and technical assistance funding that NRCS will reserve to support project implementation;

(9) Establish the general terms and conditions of any supplemental agreements that NRCS or the lead partner may enter into with nonlead partners;

(10) Identify the terms and conditions under which either NRCS or the lead partner may enter into supplemental agreements to further the purposes of the partnership agreement;

(11) Provide a detailed description of how the lead partner will facilitate participation of historically underserved producers (including through advance payment options, increased payment rates, outreach activities, or other methods for increasing participation by historically underserved producers) if the proposal received increased ranking priority as described in §1464.21(b)(8);

(12) Identify the other requirements identified by NRCS; and

(13) Include any unique requirements if the partnership agreement is a grant agreement or alternative funding arrangement.

(e) *Supplemental agreements.* NRCS may enter into supplemental agreements with a lead partner or a nonlead partner to provide technical assistance or to assist producers with implementation of eligible activities in the project area as identified in §1464.26.

(f) *Partnership agreement renewal.* (1) As determined by NRCS, a partnership agreement may be renewed for a period not to exceed 5 years.

(2) NRCS may agree to renew the partnership agreement through an expedited process if—

(i) The lead partner requests such a renewal; and

(ii) NRCS determines that the project has met or exceeded project objectives as verified by NRCS.

(3) To facilitate expedited renewal, NRCS may designate a portion of available RCPP funding for expedited renewal requests.

(4) NRCS will not rank expedited renewal requests against new proposals.

(5) Under a renewal of a partnership agreement, the parties may request to continue to implement the project as defined in the original partnership agreement or expand the scope of the project consistent with the objectives and purposes of the original partnership agreement.

(g) *Notification.* All eligible partners who submit a proposal for a partnership agreement or submit a request to renew a partnership agreement will receive notification from NRCS regarding selection or nonselection of the project proposal or approval or denial of the renewal request.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§1464.23 Funding.

(a) Except as otherwise provided in this subpart, NRCS will only provide technical and financial assistance to producers through program contracts as described in subpart C of this part.

(b) Notwithstanding the restriction set forth in paragraph (a) of this section, NRCS may provide technical and financial assistance to a partner:

(1) Where the partnership agreement is funded through an alternative funding arrangement or grant agreement under §1464.25; or

(2) Pursuant to a supplemental agreement executed in furtherance of a partnership agreement, as set forth in §1464.26.

(c) Notwithstanding the restriction set forth in paragraph (a) of this section, pursuant to a partnership agreement or supplemental agreement, NRCS may provide funding to a partner for technical assistance for an eligible purpose, such as:

(1) Providing outreach and education for potential participation in the project;

(2) Establishing baseline metrics to support the development of the assessment required under §1464.22(d)(6); or

(3) Providing technical assistance to producers.

(d) Notwithstanding the restriction set forth in paragraph (a) of this section, NRCS may enter into third-party contracts or agreements to meet its responsibilities under the program using program funding.

(e) Any funding provided by NRCS under paragraphs (a) through (d) of this section will count against the total amount of funding that NRCS agreed to provide to the project under the terms of the partnership agreement.

§ 1464.24 Modification, noncompliance, termination, and remedies.

(a) *Modifications.* NRCS may modify a partnership agreement, including associated supplemental agreements, if—

(1) The lead partner or, as applicable, the nonlead partner agrees to the modification; and

(2) NRCS determines the modified partnership agreement or associated supplemental agreement continues to meet the purposes of the program.

(b) *Noncompliance.* In the event of noncompliance with the partnership agreement terms, NRCS will provide the lead partner written notice as specified in the partnership agreement, and, where appropriate, a reasonable opportunity to correct voluntarily the noncompliance in accordance with the terms of the partnership agreement.

(c) *Terminations.* (1) Lead partners may request that NRCS terminate the partnership agreement, provided the request for termination is in writing, and includes the reasons for termination.

(2) NRCS may terminate a partnership agreement if—

(i) Justified by the reasons provided by the lead partner;

(ii) NRCS determines that a modification of the partnership agreement is necessary to comply with applicable law and the partner does not concur with such modification; or

(iii) The lead partner fails to correct noncompliance with a term of the partnership agreement under paragraph (b) of this section.

(3) A termination may be justified by circumstances beyond the lead partners' control that prevents completion of one or more provisions of the partnership agreement, such as a natural disaster or other circumstances in which NRCS may determine that termination is in the public interest.

(4) If a program agreement is terminated, the lead partner forfeits all rights to any remaining technical or financial assistance under the partnership agreement.

(d) *Effect on other agreements.* Termination of a partnership agreement under this section will—

(1) Not affect the validity of any program contract that was entered into within the project area encompassed by the partnership agreement; and

(2) Result in the termination of a supplemental agreement unless NRCS determines that the supplemental agreement would continue to provide necessary program implementation assistance to producers with program contracts or otherwise advance an eligible program activity within the project area.

(e) *Refund and right to future assistance.* If NRCS terminates a partnership agreement due to noncompliance with its terms or conditions, the lead partner will forfeit any right to future assistance under the partnership agreement and will refund all or part of any payments received directly by the lead partner, plus interest.

(f) *Liquidated damages.* (1) NRCS may include terms in a partnership agreement that allow for the assessment of liquidated damages against the lead partner in the event of an intentional breach.

(2) The amount of any liquidated damages will be set at an amount reasonably calculated to reimburse NRCS for its foreseeable losses in the event of noncompliance and will not be punitive in nature.

§ 1464.25 Alternative funding arrangements or grant agreements.

(a) When the Chief so determines, NRCS may offer to fund a proposal through an alternative funding arrangement or grant agreement under this section.

(b) In determining whether to offer to fund a proposal through an alternative funding arrangement or grant agreement, the Chief will consider the extent to which the proposal:

(1) Will achieve conservation benefits on a regional or watershed scale;

(2) Involves investments in infrastructure related to agricultural or nonindustrial private forest production that would benefit multiple producers and address natural resource concerns such as drought, wildfire, or water quality impairment on the land within the proposal area;

(3) Addresses natural resource concerns, including the development and implementation of watershed, habitat, or other area restoration plans;

(4) Uses innovative approaches to leverage the Federal investment with private financial mechanisms, such as:

(i) Provision of performance-based payments to producers, or

(ii) Support for an environmental market; and

(5) Otherwise demonstrates that the goals and objectives of the program would be more easily achieved by offering to fund the proposal through an alternative funding arrangement or grant agreement under this section.

(c) The terms of an alternative funding arrangement or grant agreement may be made expressly in the partnership agreement and may include providing financial assistance directly to the lead partner or to nonlead partners through supplemental agreements.

(d) NRCS will not enter into more than 15 partnership agreements funded through an alternative funding arrangement or grant agreement each fiscal year.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.26 Supplemental agreements.

(a) *Authorization.* Subject to the conditions in this section and in the partnership agreement, NRCS may enter into supplemental agreements with a lead partner or a nonlead partner.

(b) *Effect on programmatic agreement.* A supplemental agreement may not modify the substantive terms of the partnership agreement.

(c) *Technical assistance.* (1) NRCS may provide technical assistance funds under a supplemental agreement to facilitate the provision of technical assistance by the lead partner or nonlead partner to producers in the project area.

(2) Any technical assistance funds obligated under a supplemental agreement by NRCS will count against the total amount of technical assistance funds that NRCS agreed to provide to the project under the terms of the partnership agreement.

(d) *Financial assistance.* Based upon eligibility, evaluation, and selection criteria developed by NRCS, NRCS may provide financial assistance funds under a supplemental agreement if the supplemental agreement is:

(1) To facilitate the conveyance of an easement to an eligible entity by a producer;

(2) To implement an eligible activity that is available under 7 CFR part 622, except for the Watershed Rehabilitation Program set forth in 16 U.S.C. 1012;

(3) Other situations where a program contract requires the integration of a supplemental agreement to facilitate the implementation of an eligible activity, as determined by NRCS.

(e) *Term.* A supplemental agreement will be for a term that is within the term of a partnership agreement unless NRCS determines that the term of the supplemental agreement should extend beyond the term of the partnership agreement to ensure appropriate assistance to participating producers or completion of an eligible activity.

(f) *Noncompliance and remedies.* NRCS will incorporate in a supplemental agreement:

(1) The procedures required in the event of a determination that the lead partner or nonlead partner is not in compliance with the terms and conditions of the supplemental agreement;

(2) The consequences for failure to remedy noncompliance, including termination of the supplemental agreement, the requirement to repay any payments received, forfeit any future payments, and the availability of liquidated damages;

(3) The impacts of termination of the supplemental agreement upon the partnership agreement or any associated program contract;

(4) The availability, if any, of administrative review of NRCS determinations under § 1464.40; and

(5) Other terms and conditions NRCS determines necessary to ensure the effective delivery of program resources to producers.

§ 1464.27 Third-party contracts or agreements.

(a) Lead and nonlead partners may employ third-party contracts or agreements to fulfill their obligations under a partnership or supplemental agreement, subject to approval by the Chief or as allowed per the terms of the partnership or supplemental agreement.

(b) Any costs to a lead or nonlead partner as part of a third-party contract or agreement as described in paragraph (a) of this section may constitute all or part of a partner contribution described in §1464.22(d)(4) to the extent that such costs directly relate to fulfilling the obligations of a partnership or supplemental agreement, as determined by NRCS.

(c) NRCS may employ third-party contracts or agreements in order to meet its responsibilities under the terms of an approved partnership agreement, supplemental agreement, or program contract, including but not limited to easement acquisition services, implementation services, or other goods or services NRCS determines are necessary to meet its responsibilities under RCPP.

Subpart C—Program Contracts

§ 1464.30 Application for program contracts and selecting applications for funding.

(a) *Evaluation guidelines.* In evaluating program contract applications, NRCS may take into consideration the following guidelines:

(1) Any producer who has eligible land in a project area encompassed by a partnership agreement may submit an application for participation in RCPP.

(2) To the greatest extent practicable, applications for similar eligible activities may be grouped together in ranking pools for evaluation and ranking purposes.

(3) Upon execution of a partnership agreement, NRCS will accept producer applications for funding under such agreement throughout the fiscal year and may be evaluated and ranked on a continuous or ranking-period basis.

(4) NRCS may give priority to applications that are submitted as part of a bundle submitted by a lead partner.

(5) In selecting RCPP applications, NRCS will develop an evaluation and ranking process to prioritize eligible applications for funding that address the purposes of the project or CCA, including treating the identified project or priority resource concerns, as applicable.

(b) *Selection order.* (1) NRCS will select eligible applications for funding in order of ranking priority taking into account identified evaluation periods and ranking pools.

(2) NRCS may decline to select an eligible application if the remaining funding is insufficient to fund that application and NRCS may proceed to the next application in ranked order that can be funded with available funding.

(3) NRCS, in consultation with the lead partner, may identify and establish in the partnership agreement other limited circumstances that may warrant selection of eligible applications outside of a strictly applied rank order because such application is critical to the success of a project that provides conservation benefits to multiple producers or landowners in a community, watershed, or other geographic area.

(c) *Public information.* Pursuant to the terms of the partnership agreement, NRCS or the lead partner will make available to the public sign-up information, including the identification of program and priority resource concerns, a listing of eligible activities, payment rates for certain eligible activities, State supplemental guidance, and contact information for the RCPP State coordinators available to assist partners and applicants with the program.

(d) *Applications in CCAs.* (1) NRCS will identify the designated CCAs and publish priority resource concerns for a CCA project.

(2) NRCS will select eligible applications for program contracts within CCAs that address one or more priority resource concerns for which the CCA is designated.

(3) NRCS will identify the priority resource concerns and associated ranking criteria in any announcement under §1464.20.

(4) Lands outside of a CCA are not eligible for applications in the CCA, even where conservation efforts on such land may influence resource concerns within the CCA.

[85 FR 8137, Feb. 13, 2020, as amended at 86 FR 3744, Jan. 15, 2021]

§ 1464.31 Program contract requirements.

(a) *Requirement of a program contract.* For a producer to receive payments, the producer must enter into a program contract and agree to the terms and conditions associated with the type of eligible activity to be implemented.

(b) *Program contract contents.* A program contract will:

(1) Identify the requirements for participation under RCPP, including:

(i) Contract duration;

(ii) Maximum Federal payment amounts or rates; and

(iii) Any other necessary requirements, as determined by NRCS;

(2) Identify:

(i) The eligible activities that the participant agrees to implement; and

(ii) The requirements to demonstrate successful implementation of the eligible activities;

(3) Incorporate the RCPP plan of operations, as applicable, which includes—

(i) Identification of eligible activities contained in the program contract, including which resource concerns each eligible activity addresses;

(ii) A schedule or timeline for implementation of selected eligible activities, as applicable; and

(iii) Other criteria as determined necessary by NRCS;

(4) Incorporate provisions to further the purposes of the partnership agreement;

(5) Incorporate all provisions as required by statute or regulation, including requirements that the participant will:

(i) Not conduct any action that would defeat the program's purposes;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the program contract, consistent with the provisions of § 1464.36; and

(iii) Supply information if required by NRCS to determine compliance with program requirements; and

(6) Specify any other provision determined necessary or appropriate by NRCS to ensure the program purpose is met.

(c) *Payment eligibility.* To be eligible to enter into a program contract or receive a payment, an applicant or participant must—

(1) Provide a tax identification number; however, where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(2) Indicate, where applicable, the percent interest share in a payment that is consistent with operation or ownership shares;

(3) Comply with the highly erodible land and wetland conservation provisions found at part 12 of this title at the time of application and throughout the contract term; and

(4) Be eligible for payments in accordance with part 1400 of this chapter, average adjusted gross income limitation, including any waiver of these requirements, prior to program contract approval.

(d) *Duplication of payment.* (1) Except as otherwise indicated in this paragraph, any payments received by a participant from a State, private entity, or person for the implementation of one or more eligible activities on eligible land will be in addition to the payments provided to the participant under this part.

(2) NRCS will not issue financial assistance to a participant through a program contract for eligible activities on eligible land if the participant receives payments or other benefits for the same or similar eligible activity on the same land under any other conservation program administered by USDA.

(3) NRCS will not provide technical or financial assistance to a participant for more than one eligible activity to achieve the same resource benefit on the same land during the same time period.

§ 1464.32 Modifications and transfers of land.

(a) *Modifications.* NRCS may modify a program contract, if:

(1) The parties agree to the modification, and

(2) NRCS determines the modified program contract continues to meet the purposes of the program.

(b) *Notice of loss of effective control.* NRCS may terminate an entire program contract if, within the time specified in the program contract, the participant does not provide NRCS with written notice regarding any voluntary or involuntary loss of effective control of any acreage under the program contract, which includes changes in the participant's ownership structure or corporate form.

(c) *Approval of transfer.* NRCS may approve a transfer of a program contract if:

(1) NRCS has documented notice from the current participant that identifies the new producer who will take control of the acreage, as required in paragraph (e) of this section;

(2) The current participant transfers rights and responsibilities to the new producer;

(3) The new producer meets program eligibility requirements within a reasonable time frame, as determined by NRCS, and agrees to assume the rights and responsibilities from the current participant for the acreage under the program contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the current participant's losing effective control of all or a portion of the land under contract.

(d) *Payment status.* (1) Until NRCS approves the transfer of program contract rights, the transferee is not a participant in the program and may not receive payment for eligible activities implemented prior to NRCS approval of the program contract transfer.

(2) For program contract payment purposes, NRCS will consider the transferor to be the participant to whom payments may be made for eligible activities implemented when NRCS approval of the program contract transfer is pending.

(e) *Right to terminate.* NRCS may not approve a program contract transfer and may terminate the program contract in its entirety if NRCS determines that the loss of effective control of the land was voluntary, the participant's written notification of loss of effective control was not provided to NRCS within the specified timeframe, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

(f) *Run with the land.* Once an easement deed has been acquired, an easement will run with the land and bind all successors and assigns. Subordination, modification, exchange, or termination of an easement acquired under this part will be consistent with the policies and procedures under 7 CFR part 1468.

(g) *Reestablishment.* In the event an eligible activity fails through no fault of the participant, NRCS may issue payments to reestablish the eligible activity, subject to such limitations that NRCS may establish.

§ 1464.33 Violations and remedies.

(a) *Reasonable notice.* In the event of a violation of the program contract terms, NRCS will provide the participant written notice as specified in the program contract, and, where appropriate, a reasonable opportunity to voluntarily correct the violation in accordance with the terms of the program contract.

(b) *Voluntary correction.* If the participant fails to correct the violation of a term of the program contract in the timeframe specified by NRCS, NRCS may terminate the program contract or require modification as a condition to keep the program contract in effect.

(c) *Refund and right to future assistance.* If NRCS terminates a program contract due to a violation of its terms or conditions, the participant will forfeit any right to future assistance under the program contract and will refund all or part of any payments received by the participant, plus interest.

(d) *Liquidated damages.* (1) NRCS may include terms in a program contract that allow for the assessment of liquidated damages in the event of a violation.

(2) The amount of any liquidated damages will be set at an amount reasonably calculated to reimburse NRCS for its foreseeable losses in the event of a violation by the participant and will not be punitive in nature.

(3) NRCS will enforce a liquidated damage provision if the Chief determines doing so is in the best interests of RCPP.

(e) *Hardships.* (1) NRCS may allow a participant in a program contract terminated in accordance with the provisions of paragraph (b) of this section to retain a portion of any payments received appropriate to the effort the participant has made to comply with the program contract, or in cases of hardship, where NRCS determines that forces beyond the participant's control prevented compliance with the program contract.

(2) The condition that is the basis for the participant's inability to comply with the program contract must not have existed at the time the program contract was executed by the participant.

(3) If a participant believes that such a hardship condition exists, the participant may submit a written request to NRCS for relief pursuant to this paragraph and any such request will contain documentation sufficient for NRCS to determine that this hardship condition exists.

(f) *Death, incompetency, disappearance.* In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the program contract, terminate the contract, make any payments due under this part pursuant to guidance under applicable provisions of parts 707 and 1400 of this title (including payment to successor(s)), or take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

(g) *Administrative errors.* NRCS reserves the right to correct any and all errors in entering data or the results of computations in a program contract. If a participant does not agree to such corrections, NRCS will terminate the program contract.

Subpart D—General Administration

§ 1464.40 Appeals.

(a) *Participants under program contracts.* A participant may obtain administrative review of an adverse decision under RCPP in accordance with parts 11 and 614 of this title. Any and all determination in matters of general applicability, such as payment rates, the designation of identified program or priority resource concerns, and eligible activities are not subject to appeal.

(b) *Lead partners and nonlead partners under partnership or supplemental agreements.*

(1) A lead partner or nonlead partner may obtain a review of any administrative determination concerning eligibility as a partner under the program or eligibility for financial assistance payments under an agreement that obligated financial assistance funds utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(2) NRCS provision of technical assistance funds under a partnership agreement or supplemental agreement are not subject to administrative review as the provision of such funds are to assist NRCS with its implementation of the program consistent with 16 U.S.C. 3842 and are not program payments or benefits to a lead partner or nonlead partner.

§ 1464.41 Compliance with regulatory measures.

Participants who implement eligible activities will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for their implementation consistent with applicable statutes and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1464.42 Access to agricultural operation or tract.

Any authorized NRCS representative will have the right to enter an agricultural operation or tract of land for the purposes of determining eligibility, conducting ranking and due diligence activities, and for ascertaining the accuracy of any representations related to agreement or contract performance. Access will include the right to provide technical assistance, determine eligibility, conduct ranking and onsite inspections prior to execution of an agreement or contract, inspect any actions undertaken under the agreement or contract, and collect information necessary to evaluate agreement or contract performance, as specified in

the agreement or contract. The NRCS representative will attempt to contact the applicant or participant prior to exercising this provision.

§ 1464.43 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635; however, the financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

(b) If a participant has been found in violation of a program requirement through failure to comply fully with that requirement, the participant may be eligible for equitable relief under 7 CFR part 635.

§ 1464.44 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, legal entity, joint operation, or Indian Tribe will be made without regard to questions of title to the payment under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will apply to contract payments.

(b) Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1464.45 Misrepresentation and scheme or device.

(a) A person, legal entity, joint operation, or Indian Tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to payments under RCPP and must refund to NRCS all RCPP payments, plus interest, determined in accordance with part 1403 of this chapter.

(b) A participant will lose all interest in all contracts or agreements with NRCS and will refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter, received by such participant with respect to all contracts and agreements if it is determined that the participant has knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation to NRCS;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(c) If NRCS determines that a participant has violated the terms of a program contract, a lead partner has violated the terms of a partnership agreement, or a lead partner or nonlead partner has violated the terms of a supplemental agreement, NRCS may determine that the severity of the violation renders the participant, lead partner, or nonlead partner, respectively, ineligible for future NRCS conservation program consideration in accordance with applicable suspension and debarment regulations.

§ 1464.46 Environmental credits for conservation improvements.

NRCS recognizes that environmental benefits will be achieved by implementing eligible activities funded through RCPP, and a participant may obtain environmental credits as a result of implementing additional eligible activities through an environmental service market if one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with the purposes of a program contract or supplemental agreement. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for RCPP-funded eligible activities are met. Where the non-RCPP funded additional eligible activities may impact the land under a program contract or supplemental

agreement, producers and participants are highly encouraged to request an O&M compatibility determination from NRCS prior to entering into any environmental credit agreements.

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

Subpart A—General Provisions

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Subpart B—Contracts

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1465.36 Environmental services credits for conservation improvements.

AUTHORITY: 7 U.S.C. 1524(b).

SOURCE: 74 FR 64595, Dec. 8, 2009, unless otherwise noted.

Subpart A—General Provisions

§ 1465.1 Purposes and applicability.

Through the Agricultural Management Assistance program (AMA), the Natural Resources Conservation Service (NRCS) provides financial assistance funds annually to producers in 16 statutorily designated States to: Construct or improve water management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices including soil erosion control, integrated pest management, or the transition to organic farming. AMA is applicable in Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

§ 1465.2 Administration.

(a) Administration and implementation of AMA's conservation provisions for the Commodity Credit Corporation (CCC) is assigned to NRCS, using the funds, facilities, and authorities of the CCC. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities, where applicable.

(b) NRCS will:

(1) Provide overall management and implementation leadership for AMA;

(2) Establish policies, procedures, priorities, and guidance for implementation;

(3) Establish payment limits;

(4) Determine eligible practices;

(5) Develop and approve AMA plans of operation and contracts with selected participants;

(6) Provide technical leadership for implementation, quality assurance, and evaluation of performance;

(7) Make AMA allocation and contract funding decisions; and

(8) Issue payments for completed conservation practices.

(c) No delegation in this part to lower organizational levels will preclude the Chief of NRCS from determining any issues arising under this part or from reversing or modifying any determination made under this part.

§ 1465.3 Definitions.

The following definitions apply to this part and all documents used in accordance with this part, unless specified otherwise:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural or forest-related products or

livestock are produced. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management and production, forestry, or cultivation practices that are substantially separate from other operations.

AMA plan of operations (APO) means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to address the resource concerns and program purposes. The APO is part of the AMA contract.

Applicant means a person, legal entity, joint operation, or Indian Tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in AMA.

Beginning farmer or rancher means a person or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm or ranch is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''natural resource district,'' ''land conservation committee,'' or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that achieve program purposes.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An AMA contract is an agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for AMA administration in a specific area.

Historically underserved producer means an eligible person, joint operation, or legal entity who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or nonindustrial private forest landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in this section.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)

that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or Tribes, or all lands, titles to which are held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and benefit of certain Tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian Tribes and the United States Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR part 1400, an entity created under Federal or State law that: (1) Owns land or an agricultural commodity, product, or livestock; or (2) produces an agricultural commodity, product, or livestock.

Lifespan means the period of time in which a conservation practice should be operated and maintained and used for the intended purpose.

Limited resource farmer or rancher means:

(1) A person with direct or indirect gross farm sales of not more than $155,200 in each of the previous 2 years (adjusted for inflation using the Prices Paid by Farmer Index as compiled by the National Agricultural Statistics Service), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department data).

Liquidated damages means a sum of money stipulated in the AMA contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means all animals produced on farms and ranches, as determined by the Chief.

Natural Resources Conservation Service is an agency of USDA which has responsibility for administering AMA using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Operation and maintenance (O&M) agreement means the document that, in conjunction with the APO, specifies the operation and maintenance responsibilities of the participants for conservation practices installed with AMA assistance.

Participant means a person, legal entity, joint operation, or Indian Tribe that is receiving payment or is responsible for implementing the terms and conditions of an AMA contract.

Payment means the financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for planning, design, materials, equipment, installation, labor, maintenance, management, or training, as well as the estimated income foregone by the producer for the designated conservation practices.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Producer means a person, legal entity, joint operation, or Indian Tribe that has an interest in the agricultural operation, according to 7 CFR part 1400, or who is engaged in agricultural production or forestry management.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by participants.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants or in lieu of, or on behalf of NRCS.

§ 1465.4 National priorities.

(a) The Chief, with advice from State Conservationists, will identify national priorities to achieve the conservation objectives of AMA.

(b) National priorities will be used to guide annual funding allocations to States. (c) State Conservationists will use national priorities in conjunction with State and local priorities to prioritize and select AMA applications for funding.

(d) NRCS will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local levels to adapt the program to address emerging resource issues.

§ 1465.5 Program requirements.

(a) Participation in AMA is voluntary. The participant, in cooperation with the local conservation district, applies for practice installation for the agricultural operation. NRCS provides payments through contracts to apply needed conservation practices within a time schedule specified in the APO.

(b) The Chief determines the funds available for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out AMA in consideration of national priorities established under § 1465.4.

(c) To be eligible to participate in AMA, an applicant must:

(1) Own or operate an agricultural operation within an applicable State, as listed in 1465.1;

(2) Provide NRCS with written evidence of ownership or legal control for

the life of the proposed contract, including the O&M agreement. An exception may be made by the Chief:

(i) In the case of land allotted by the BIA, Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; or

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant will provide NRCS with the written concurrence of the landowner in order to apply a structural practice(s);

(3) Submit an application form NRCS–CPA–1200;

(4) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor contract compliance;

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(6) With regard to contracts with Indian Tribes or Indians represented by the BIA, payments if a BIA or Tribal official certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made by social security or tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The BIA or Tribal entity must also provide, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation practice implementation.

(7) Supply other information, as required by NRCS, to determine payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income;

(8) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other AMA contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of § 1465.25;

(9) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment;

(10) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party; and

(11) Develop and agree to comply with an APO and O&M agreement, as described in § 1465.3.

(d) Land may only be considered for enrollment in AMA if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is a working component of the participant's agricultural and forestry operation; and

(ii) The participant has control of the land for the term of the contract; and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

(3) The land is Indian land.

[74 FR 64595, Dec. 8, 2009, as amended at 76 FR 19684, Apr. 8, 2011; 83 FR 23209, May 18, 2018]

§ 1465.6 AMA plan of operations.

(a) All conservation practices in the APO must be approved by NRCS and developed and carried out in accordance with the applicable NRCS technical guidance.

(b) The participant is responsible for implementing the APO.

(c) The APO must include:

(1) A description of the participant's specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation system, including conservation planning, design, or installation activities to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(d) An APO may be modified in accordance with § 1465.24.

§ 1465.7 Conservation practices.

(a) The State Conservationist will determine the conservation practices eligible for AMA payments. To be considered eligible conservation practices, the practices must meet the purposes of the AMA as set out in § 1465.1. A list of eligible practices will be available to the public.

(b) The APO includes the schedule of operations, activities, and payment rates of the practices needed to solve identified natural resource concerns.

§ 1465.8 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, local agencies, Indian Tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; and information, education, and training for producers, and related technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving AMA payments.

Subpart B—Contracts

§ 1465.20 Applications for participation and selecting applications for contracting.

(a) Any producer who has eligible land may submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation will file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance, national priorities, and the State-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist will develop ranking criteria and a ranking process to select applications, taking into account national, State, Tribal, and local priorities.

(d) The State Conservationist, or designated conservationist, using a locally-led process will evaluate, rank, and select applications for contracting based on the State-developed ranking criteria and ranking process.

(e) The State Conservationist, or designated conservationist, will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

§ 1465.21 Contract requirements.

(a) In order for a participant to receive payments, the participant will enter into a contract agreeing to implement one or more eligible conservation practices. Costs for technical services may be included in the contract.

(b) An AMA contract will:

(1) Encompass all portions of an agricultural operation receiving AMA assistance;

(2) Be for a duration of not more than 10 years;

(3) Incorporate all provisions required by law or statute, including participant requirements to:

(i) Not conduct any practices on the agricultural operation that would tend to defeat the purposes of the contract according to § 1465.25;

(ii) Refund any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the contract, consistent with the provisions of § 1465.25;

(iii) Refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee

of the right and interest agrees to assume all obligations, including operation and maintenance of the AMA contract's conservation practices, consistent with the provisions of §1465.24; and

(iv) Supply information as required by NRCS to determine compliance with the contract and requirements of AMA.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of §1465.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply the practice(s) according to the schedule set out in the APO.

[74 FR 64595, Dec. 8, 2009, as amended at 79 FR 44641, Aug. 1, 2014]

§1465.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the O&M agreement that addresses the operation and maintenance of the conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.

(c) NRCS may periodically inspect the conservation practice(s) during the contract duration to ensure that operation and maintenance requirements are being carried out, and that the conservation practice is fulfilling its intended objectives.

(d) Conservation practices installed before the contract execution, but included in the contract to obtain the environmental benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

(f) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the conservation practice, at the rates established in accordance with §1465.23, provided such payments do not exceed the payment limitation requirements as set forth in §1465.23.

§1465.23 Payments.

(a) The Federal share of payments to a participant will be:

(1) Up to 75 percent of the estimated incurred cost or 100 percent of the estimated income foregone of an eligible practice, except as provided in (a)(2) of this section.

(2) In the case of historically underserved producers, the payment rate will be the applicable rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated incurred costs or estimated income foregone.

(3) In no instance will the total financial contributions for an eligible practice from other sources exceed 100 percent of the estimated incurred cost of the practice.

(b) Participants may contribute their portion of the estimated costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the NRCS standard and specifications for the practice being installed.

(c) Payments for practices applied prior to application or contract approval—

(1) Payments will not be made to a participant for a conservation practice that was applied prior to application for the program.

(2) Payments will not be made to a participant for a conservation practice that was initiated or implemented prior to contract approval, unless the participant obtained a waiver from the State Conservationist, or designated conservationist, prior to practice implementation.

(d) The total amount of payments paid to a person or legal entity under this part may not exceed $50,000 for any fiscal year.

(e) For purposes of applying the payment limitations provided for in this section, NRCS will use the provisions

in 7 CFR part 1400, Payment Limitation and Payment Eligibility.

(f) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice on the same land under any other conservation program administered by USDA.

(g) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before NRCS will approve any payment.

(h) Subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs.

§ 1465.24 Contract modifications, extensions, and transfers of land.

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the APO is revised in accordance with NRCS requirements, and the designated conservationist approves the modified contract.

(b) It is the participant's responsibility to notify NRCS when he or she either anticipates the voluntary or involuntary loss of control of the land.

(c) The participant and NRCS may mutually agree to transfer a contract to another party.

(1) To receive an AMA payment, the transferee must be determined by NRCS to be eligible to participate in AMA and will assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) With respect to any and all payment owed to participants who wish to transfer ownership or control of land subject to a contract, the division of payment will be determined by the original party and the party's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(d) NRCS may require a participant to refund all or a portion of any assistance earned under AMA if the participant sells or loses control of the land under an AMA contract, and the successor in interest is not eligible or refuses to accept future payments to participate in the AMA or refuses to assume responsibility under the contract.

(e) The contract participants will be jointly and severally responsible for refunding the payments with applicable interest pursuant to paragraph (d) of this section.

§ 1465.25 Contract violations and termination.

(a) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or other documents incorporated into the contract, NRCS will give the participant notice and 60 days, unless otherwise determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the AMA contract.

(b) Notwithstanding the provisions of (a) of this section, a contract termination will be effective immediately upon a determination by the State Conservationist that the participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1465.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract and refund all or part of the payments received, plus interest. Participants violating AMA contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) The State Conservationist may require only a partial refund of the payments received if the State Conservationist determines that a previously installed conservation practice can function independently and is not affected by the violation or the absence of other

conservation practices that would have been installed under the contract.

(2) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract and will pay such liquidated damages as prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages depending upon the circumstances of the case.

(i) When making all contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If the participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) The participant may voluntarily terminate a contract if NRCS agrees based on NRCS' determination that termination is in the public interest.

(iii) In carrying out NRCS' role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1465.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under AMA in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits;

(2) Funding allocations;

(3) Eligible conservation practices; and

(4) Other matters of general applicability, including:

(i) Technical standards and formulas;

(ii) Denial of assistance due to lack of funds or authority; or

(iii) Science-based formulas and criteria.

§ 1465.31 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1465.32 Access to operating unit.

Any authorized NRCS representative will have the right to enter an operating unit or tract for the purpose of determining eligibility and for ascertaining the accuracy of any representations related to contracts and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the contracts, including the APO and O&M agreement; and collect information necessary to evaluate the conservation practice performance as specified in the contracts. The NRCS representative will make an effort to contact the participant prior to exercising this provision.

§ 1465.33 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635, section 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If a participant has been found in violation of a provision of the AMA contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635, section 635.4.

§ 1465.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant will be made without regard to questions of Title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.

(b) AMA participants may assign any payments in accordance with 7 CFR part 1404.

§ 1465.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting an AMA determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments plus interest, as determined in accordance with 7 CFR part 1403.

(b) A participant will refund to NRCS all payments, plus interest, as determined by NRCS with respect to all NRCS contracts to which they are a party if they are determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of AMA;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting an AMA determination.

(c) Where paragraph (a) or (b) of this section applies, the participant's interest in all contracts will be terminated. In accordance with §1465.25(c), NRCS may determine the producer ineligible for future funding from any NRCS conservation programs.

§ 1465.36 Environmental services credits for conservation improvements.

NRCS recognizes that environmental benefits will be achieved by implementing conservation practices funded through AMA, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an AMA contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance requirements for AMA-funded improvements are met, consistent with §1465.21 and §1465.22. Where activities may impact the land under an AMA contract, participants are highly encouraged to request an operation and maintenance compatibility determination prior to entering into any credit agreements. The AMA conservation program contract may be modified in accordance with policies outlined in §1465.24 provided the modifications meet AMA purposes and are in compliance with this part.

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c; and 16 U.S.C. 3839aa—3839–8.

SOURCE: 84 FR 69280, Dec. 17, 2019, unless otherwise noted.

Subpart A—General Provisions

§ 1466.1 Applicability.

(a) *Purposes.* (1) The purposes of the Environmental Quality Incentives Program (EQIP) are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits.

(2) Through EQIP, NRCS provides technical and financial assistance to eligible agricultural producers, including nonindustrial private forest (NIPF) landowners and Indian Tribes, to help implement conservation practices that address resource concerns related to organic production; soil, water, and air quality; wildlife habitat; nutrient management associated with crops and livestock; pest management; ground and surface water conservation; irrigation management; drought resiliency measures; adapting to and mitigating against increasing weather volatility; energy conservation; and related resource concerns.

(3) EQIP's financial and technical assistance helps:

(i) Producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner; and

(ii) To the maximum extent practicable, avoid the need for resource and regulatory programs.

(4) The purposes of EQIP are achieved by planning and implementing conservation practices on eligible land to address identified, new, or expected resource concerns, including such resource concerns related to lands enrolled under a Conservation Reserve Program contract that are transitioning into production as specified in 16 U.S.C. 3835(f).

(b) *Availability.* EQIP is available in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(c) *Applicability.* Each contract enrolled into EQIP, is subject to the regulations in effect on the date it is enrolled.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.2 Administration.

(a) *The Commodity Credit Corporation (CCC) funds, facilities, authorities.* Because the funds, facilities, and authorities of the CCC are available to NRCS for carrying out EQIP, each reference to NRCS in this part also refers to the CCC's funds, facilities, and authorities where applicable.

(b) *Locally-led conservation.* (1) NRCS supports locally-led conservation by soliciting input from the State Technical Committee and the Tribal Conservation Advisory Council at the State level, and local working groups at the county, parish, or Tribal level to advise NRCS on issues relating to EQIP implementation.

(2) Recommendations from the State Technical Committee and the Tribal Conservation Advisory Council may include but are not limited to:

(i) Recommendations for program priorities and criteria;

(ii) Identification of priority resource concerns;

(iii) Recommendations about which conservation practices will be effective to treat identified priority resource concerns; and

(iv) Recommendations of program payment rates for payment schedules.

(c) *Delegations.* No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part.

(d) *Waiver.* The Chief may modify or waive a nonstatutory, discretionary provision of this part if the Chief determines the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program;

(e) *Scope of agreement authority.* NRCS may enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, acequias, and individuals to assist NRCS with implementation of the program in this part.

§ 1466.3 Definitions.

The definitions in this section apply to this part and all documents issued in accordance with this part, unless specified elsewhere in this part:

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, or cultivation practices that are substantially separate from other operations.

Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the conditions in this definition are met:

(1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Animal waste storage or treatment facility means a structural conservation practice, implemented on an AFO consistent with the requirements of a comprehensive nutrient management plan (CNMP) and Field Office Technical Guide (FOTG), which is used for storing, treating, or handling animal waste or by-products, such as animal carcasses.

Applicant means a producer who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation

of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, U.S. Department of Agriculture (USDA), or designee.

Comprehensive nutrient management plan (CNMP) means a conservation plan that is specifically for an AFO. A CNMP identifies conservation practices and management activities that, when implemented as part of a conservation system, will manage sufficient quantities of manure, waste water, or organic by-products associated with a waste management facility. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource while protecting all applicable natural resources including water and air quality associated with an AFO. A CNMP is developed to assist an AFO owner or operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient-impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Conservation benefit means the improved condition of a natural resource concern resulting from the implementation of a conservation practice.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' ''natural resource district,'' or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, soil testing, soil remediation, integrated pest management, and other plans or activities determined acceptable by the Chief. Approved conservation practices are listed in the NRCS FOTG.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of implementing conservation practices.

Cost-effectiveness means the least costly option for achieving a given set of conservation objectives to address a resource concern.

Eligible land means land on which agricultural commodities, livestock, or forest-related products are produced, and specifically includes:

(1) Cropland;

(2) Grassland;

(3) Rangeland;

(4) Pasture land;

(5) Nonindustrial private forest land; and

(6) Other agricultural land (including cropped woodland, marshes, environmentally sensitive areas as identified by NRCS, and agricultural land used for the production of livestock) on which identified or expected resource concerns related to agricultural production that may be addressed by a contract under EQIP as determined by the Chief.

Enrolled land means the land area identified and included in the program contract at the time when funds have been obligated.

EQIP plan of operations means the document that identifies the location, timing, and extent of conservation practices that the participant agrees to implement on eligible land enrolled in the program in order to address the priority resource concerns, optimize environmental benefits, and address program purposes as defined in §1466.1. The EQIP plan of operations is part of the EQIP contract.

Estimated income foregone means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, income foregone is one of the costs associated with

practice implementation as recorded in a payment schedule.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and implementation of conservation practices. It contains detailed information on the quality standards to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared. (See *https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/* to access your State FOTG.)

Forest management plan means a site-specific plan that is prepared according to NRCS criteria by a professional resource manager, in consultation with the participant, and is approved by NRCS. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another plan approved by the State forester or Indian Tribe; or another plan determined appropriate by NRCS. The plan is intended to comply with Federal, State, Tribal, and local laws, regulations, and permit requirements.

Habitat development means the application of conservation practices to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

High priority area means a watershed (or other appropriate region or area within a State) wherein the Chief, in consultation with the State Technical Committee, has identified one or more priority resource concerns.

Historically underserved producer means a person, joint operation, legal entity, or Indian Tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher.

Incentive practice means a practice or set of practices approved by the Chief that, when implemented and maintained on eligible land, address one or more priority resource concerns under a contract entered into under subpart D of this part.

Indian land means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes;

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance;

(3) Land which is subject to rights of use, occupancy or benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Integrated pest management means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR part 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice or activity should be maintained and used for the intended purpose.

Limited resource farmer or rancher means either:

(1) Individual producer:

(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for

a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Liquidated damages means a sum of money stipulated in the EQIP contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Livestock means all domesticated animals produced on farms or ranches, as determined by the Chief.

Livestock production means farm or ranch operations involving the production, growing, raising, or reproduction of domesticated livestock or livestock products.

Local working group means the advisory body as defined in 7 CFR part 610.

National Organic Program means the national program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.

National priorities mean resource issues identified by the Chief, with advice from other federal agencies, Indian Tribes, and State Conservationists, which is used to determine the distribution of EQIP funds and guide local EQIP implementation.

Natural Resources Conservation Service (NRCS) is an agency of USDA, which has responsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land (NIPF) means rural land, as determined by NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance (O&M) means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of nonmaintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

O&M agreement means the document that, in conjunction with the EQIP plan of operations, specifies the O&M responsibilities of the participant for conservation practices installed with EQIP assistance.

Organic system plan (OSP) means a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The OSP includes all written plans that govern all aspects of agricultural production or handling as required under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*).

Participant means an applicant that has entered into an EQIP contract who incurs the cost of practice implementation, will receive or has received payment, or is responsible for implementing the terms and conditions of an EQIP contract.

Payment means financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: Planning, design, materials, equipment, installation, labor, management, maintenance, or training, as well as the estimated income foregone by the participant for designated conservation practices.

Person means, as defined in 7 CFR part 1400, an individual, natural person, and does not include a legal entity.

Priority resource concern means a resource concern, as determined by the Chief, with input from the State Technical Committee, that—

(1) Is identified at the national, State, or local level as a priority for a particular area of a State; and

(2) Represents a significant concern in a State or region.

Producer means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

Resource concern means a specific natural resource issue or problem that represents a significant concern in a State or region and is likely to be addressed through the implementation of conservation practices by producers according to NRCS technical standards.

Semi-public means entities that are private or public companies that serve a public purpose, *i.e.* Public utility companies. They often have condemnation authority but are not considered part of the State or State government.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50-percent ownership in the business entity must be held by socially disadvantaged individuals.

Soil remediation means scientifically based practices, as determined by NRCS, that—

(1) Ensure the safety of producers from contaminants in soil;

(2) Limit contaminants in soils from entering agricultural products for human or animal consumption; and

(3) Regenerate and sustain the soil.

Soil testing means the evaluation of soil health, including testing for the—

(1) Optimal level of constituents in the soil, such as organic matter, nutrients, and the potential presence of soil contaminants (including heavy metals, volatile organic compounds, polycylic aromatic hydrocarbons, or other contaminants), as determined by NRCS; and

(2) Biological and physical characteristics indicative of proper soil functioning.

State conservationist means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State and the Caribbean and Pacific Island Areas.

State Technical Committee means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filter strips, critical area plantings, tree plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, training, education, and tools necessary for a producer to be able to successfully implement, operate, and maintain conservation practices to ensure the conservation of natural resources on land active in agricultural, forestry, or related uses. These technical services include:

(1) Technical services provided directly to farmers, ranchers, Indian Tribes, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, education, data, technology, monitoring, and effects analyses.

Technical service provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist in the implementation of conservation programs covered by this part through a procurement contract, contributions agreement, or cooperative agreement with the Department.

Tribal Conservation Advisory Council means, in lieu of or in addition to

forming a Tribal conservation district, an Indian Tribe may elect to designate an advisory council to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The advisory council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, and programs and their impacts on Tribes.

Veteran farmer or rancher means a producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)).

Water management entity means a State, irrigation district, groundwater management district, acequia, land grant-merced, or similar entity that has jurisdiction or responsibilities related to water delivery or management to eligible lands.

Wildlife means nondomesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.4 National priorities.

(a) The national priorities in paragraphs (a)(1) through (8) of this section, consistent with statutory resources concerns, include soil quality, water quality and quantity, plants, energy, wildlife habitat, air quality, increased weather volatility, and related natural resource concerns, that may be used in EQIP implementation are:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total maximum daily loads (TMDL) where available;

(2) The reduction of ground and surface water contamination;

(3) The reduction of contamination from agricultural sources, such as animal feeding operations;

(4) Conservation of ground and surface water resources, including improvement of irrigation efficiency and increased resilience against drought and weather volatility;

(5) Reduction of emissions, such as particulate matter, nitrogen oxides, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of the National Ambient Air Quality Standards;

(6) Reduction in soil erosion and sedimentation from unacceptable levels and improvement of soil health on eligible land;

(7) Promotion of at-risk species habitat conservation including development and improvement of wildlife habitat; and

(8) Energy conservation to help save fuel, improve efficiency of water use, maintain production, and protect soil and water resources by more efficiently using fertilizers and pesticides.

(b) In consultation with other Federal agencies and Indian Tribes, NRCS may undertake periodic reviews of the national priorities and the effects of program delivery at the State and local levels to adapt the program to address emerging resource issues. NRCS may—

(1) Use the national priorities to guide the allocation of EQIP funds to the NRCS State offices;

(2) Use the national priorities in conjunction with States, Indian Tribes, and local priorities to assist with prioritization and selection of EQIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian Tribes, other Federal and State agencies, and affected stakeholders to ensure that the program continues to address priority resource concerns.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.5 Outreach activities.

(a) NRCS conducts outreach activities at the national, State, Tribal, and local levels to ensure that producers whose land has environmental problems or priority resource concerns are aware and informed that they may be eligible to apply for program assistance.

(b) NRCS will make special outreach to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders.

(c) NRCS provides outreach to ensure producer participation is not limited based on the size or type of operation or production system, including small-scale, specialty crop, and organic production.

(d) NRCS will notify historically underserved producers, at the time of enrollment in the program, of the option to receive advance payments under §1466.24 of this part and document the election of each of these producers.

§1466.6 Program requirements.

(a) *General.* Program participation is voluntary. An applicant must develop an EQIP plan of operations for the eligible land to be treated which serves as the basis for the EQIP contract. Under EQIP, NRCS provides participants with technical assistance and payments to plan and apply needed conservation practices.

(b) *Applicant eligibility.* To be eligible to participate in EQIP, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions at 7 CFR part 12;

(2) Be a producer as determined by NRCS;

(3) Have control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land administered by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines sufficient assurance of control;

(i) The Chief may determine that land administered by BIA, Indian land, or other such circumstances provides sufficient assurance of control, and

(ii) If the applicant is a tenant of the land involved in agricultural production or forestry management, the Chief may require the applicant to obtain the written concurrence of the landowner to apply a conservation practice;

(4) Agree to implement the EQIP plan of operations according to the provisions and conditions established in the EQIP contract, including the EQIP contract appendix;

(5) Submit an EQIP plan of operations or plan developed for the purposes of acquiring an air or water quality permit, provided these plans contain elements equivalent to those elements required by an EQIP plan of operations and are acceptable to NRCS as being consistent with the purposes of the program;

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a historically underserved producer, and payment eligibility as established by 7 CFR part 1400; and

(7) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity.

(c) *Consideration for enrollment of eligible land.* Eligible land, as defined in §1466.3, may be considered for enrollment in EQIP only if NRCS determines that the land is—

(1) Privately owned land;

(2) Publicly owned land where—

(i) The land is a working component of the participant's agricultural or forestry operation,

(ii) The participant has control of the land for the term of the contract, and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

(3) Indian land.

(d) *Eligibility of a water management entity.* (1) Notwithstanding paragraphs (b) and (c) of this section, NRCS may enter into an EQIP contract with a water management entity provided the criteria in paragraphs (d)(1)(i), (ii), and (iii) of this section can be met:

(i) The entity is a public or semipublic agency or organization,

(ii) Its purpose is to assist private agricultural producers manage water distribution or conservation systems, and

(iii) The water conservation or irrigation practices support a water conservation project under §1466.20(c) that will effectively conserve water, provide

fish and wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Chief.

(2) Water conservation or irrigation practices that are the subject of a contract entered into under paragraph (d)(1) of this section shall be implemented on—

(i) Eligible land of a producer; or

(ii) Land that is—

(A) Under the control of the water management entity, and

(B) Adjacent to eligible land of a producer, provided the Chief determines the adjacent land is necessary to support the installation of a practice or system implemented on eligible land.

(3)(i) The Chief may waive the average adjusted gross income limitation set forth in 7 CFR part 1400 or the aggregate payment limitation set forth in §1466.24 of this part for a contract under paragraph (d)(1) of this section if the Chief determines that the waiver is necessary to fulfill the objectives of the project.

(ii) In determining whether to grant a waiver under this paragraph, the Chief shall consider—

(A) The number of producers who will benefit from the project;

(B) The conservation benefit of the practices involved in the project;

(C) The amount of non-federal assets leveraged to facilitate the project;

(D) The extent to which the project involves progressive implementation of conservation practices; and

(E) Other criteria as determined by NRCS.

(iii) Notwithstanding any waiver of the aggregate payment limitation, a water management entity or individual member thereof shall not receive, in the aggregate, directly or indirectly, payments under this paragraph, in aggregate, in excess of $900,000 for all contracts entered into under this paragraph by the water management entity during the period of fiscal years 2019 through 2023.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.7 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable NRCS planning and FOTG technical requirements.

(b) The participant is responsible for implementing the EQIP plan of operations according to the approved implementation schedule.

(c) The EQIP plan of operations must include—

(1) A description of the participant's specific conservation objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and natural resource objectives;

(3) A description of one or more conservation practices in the conservation management system, including conservation planning, design, or installation activities to be implemented to achieve the conservation objectives;

(4) A schedule for implementing the conservation practices, including timing, sequence, operation, and maintenance; and

(5) Information that enables evaluation of the effectiveness of the plan of operations in achieving the conservation objectives.

(d) If an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to:

(1) Develop a CNMP by the end of the contract period; and

(2) Implement any applicable conservation practices in the EQIP plan of operation consistent with an approved CNMP.

(e) An EQIP plan of operations on forest land must implement conservation practices consistent with an approved forest management plan.

(f) NRCS may provide a participant with assistance to implement an EQIP plan of operations which includes irrigation-related practices to address a water conservation resource concern only if the participant establishes through documented evidence, including irrigation history, that such assistance will facilitate a reduction in ground or surface water use on the agricultural operation, unless the producer is participating in a watershed-wide project, as approved by NRCS,

which will effectively conserve water in accordance with § 1466.20 of this part.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.8 Conservation practices.

(a) NRCS will determine the conservation practices for which participants may receive program payments and provide a list of eligible practices to the public.

(b) Payment will not be made to a participant for conservation practices that—

(1) Either the applicant or another producer has initiated or implemented prior to application for the program; or

(2) Has been initiated or implemented prior to contract approval, unless a waiver was granted by the Chief prior to the practice implementation.

(c) Unless waived for circumstances as determined by the Chief, a participant is eligible for payments for water conservation and irrigation-related conservation practices only on land that has been irrigated for 2 of the last 5 years prior to application for assistance.

(d) Upon the development of a new technology or management approach that provides a high potential for optimizing conservation benefits, NRCS may approve an interim conservation practice standard that incorporates the new technology or management approach and provide financial assistance for pilot work to evaluate and assess the performance, efficiency, and effectiveness of the new technology or management approach.

(e) NRCS will at least annually consult with State Technical Committees, Tribal Conservation Advisory Councils, local work groups, and other stakeholders to identify conservation practices with appropriate purposes and the criteria for their application to address priorities to establish wildlife habitat including—

(1) Upland wildlife habitat;

(2) Wetland wildlife habitat;

(3) Habitat for threatened and endangered species;

(4) Fish habitat;

(5) Habitat on pivot corners and other irregular areas of a field; and

(6) Other types of wildlife habitat, as determined by NRCS.

§ 1466.9 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified third-party TSPs in its delivery of EQIP technical assistance in accordance with 7 CFR part 652.

(b) Participants may obtain technical services from certified TSPs in accordance with 7 CFR part 652.

(c) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving EQIP payments.

Subpart B—Contracts and Payment

§ 1466.20 Application for contracts and selecting applications.

(a) *General guidelines.* (1) Any producer who has eligible land may submit an application for participation in EQIP.

(2) NRCS, to the greatest extent practicable, will group applications of similar crop, forestry, and livestock operations for evaluation purposes.

(3) Applications may be accepted on a continuous basis throughout the year.

(4) Producers who are members of a joint operation may file a single application for ranking purposes for the joint operation.

(b) *Ranking guidelines.* In evaluating EQIP applications, NRCS—

(1) Will establish ranking pools to address a specific resource concern by geographic area or agricultural operation type with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working groups;

(2) Will develop an evaluation process using, where applicable, science-based tools to prioritize and rank applications for funding that considers national, State, and local priority resource concerns, taking into account the factors related to conservation benefits to address identified resource concerns through implementation of conservation practices such as:

(i) The degree of cost-effectiveness of the proposed conservation practices;

(ii) The magnitude of the expected conservation benefits resulting from the conservation treatment and the priority of the resource concerns that

have been identified at the local, State, and national levels;

(iii) How effectively and comprehensively the project addresses the designated resource concern or resource concerns;

(iv) Use of conservation practices that provide long-term conservation enhancements;

(v) Compliance with Federal, State, Tribal, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation;

(vi) Willingness of the applicant to complete all conservation practices in an expedited manner;

(vii) The ability to improve existing conservation practices or systems which are in place at the time the application is accepted, or that complete a conservation system;

(viii) The applicant's meeting O&M requirements for the lifespan of conservation practices previously funded through EQIP;

(ix) The land is enrolled under a CRP contract transitioning to a covered farmer or rancher as specified in 16 U.S.C. 3835(f); and

(x) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(3) May give priority for applications that include water conservation or irrigation-related practices, and consistent with State law in which the applicant's eligible land is located, if the application—

(i) Results in a reduction in water use in the agricultural operation, or

(ii) Includes an agreement by the applicant not to use any associated water savings to bring new land (other than incidental land needed for efficient operations) under irrigation production unless the producer is participating in a watershed-wide project that will effectively conserve water as designated under paragraph (c) of this section;

(4) May not assign a higher priority to the application solely because it would present the least cost to the program if determined that the conservation benefits of two or more applications for payments are comparable;

(5) Will ensure that the ranking score does not give preferential treatment to applications based on size of the operation, income generated from the operation, type of operation, or other factors not related to conservation benefits to address a resource concern unless authorized in this rule;

(6) Will determine through the evaluation process the order in which applications will be selected for funding; and

(7) Will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in a State.

(c) *Eligibility of certain water conservation projects.* NRCS may designate as eligible watershed-wide projects that effectively conserve water, using the criteria in paragraphs (c)(1) through (3) of this section:

(1) The project area has a current, comprehensive water resource assessment; and

(2) The project plan incorporates one or more of the practices in paragraphs (c)(2)(i) through (iii) of this section:

(i) Water conservation scheduling, water distribution efficiency, soil moisture monitoring, or an appropriate combination thereof,

(ii) Irrigation-related structural or other measures that conserve surface or ground water, including managed aquifer recovery practices, or

(iii) A transition to water-conserving crops, water-conserving crop rotations, or deficit irrigation; and

(3) The project sponsors have consulted relevant State and local agencies.

(d) *Administrative efficiency.* (1) NRCS may use screening factors as part of its evaluation process that may include sorting applications into high, medium, or low priority.

(2) If screening factors are used to designate a higher priority for ranking, all eligible applications screened with a higher priority are ranked and considered for funding before ranking applications that are a lower priority.

(3) NRCS is the approving authority for all EQIP contracts.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.21 Contract requirements.

(a) *Requirement for a contract.* For a participant to receive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Payment for technical services may be included in the contract pursuant to requirements of this part.

(b) *Contract terms.* An EQIP contract will—

(1) Identify all conservation practices to be implemented, the timing of practice installation, the O&M requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a term for no more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will—

(i) Not implement any practices on the enrolled land that would defeat the program's purposes,

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26,

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including O&M of the EQIP contract's conservation practices, consistent with the provisions of § 1466.25,

(iv) Develop and implement any conservation practices identified in an EQIP plan of operations consistent with a CNMP when the EQIP contract includes an animal waste management facility on an AFO,

(v) Implement conservation practices consistent with an approved forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

(vi) Supply information as required by NRCS to determine compliance with contract and program requirements, and

(vii) Specify the participant's responsibilities for the O&M of the applied conservation practices, consistent with the provisions of § 1466.22; and

(4) Specify any other provision determined necessary or appropriate by NRCS to achieve the technical requirements of a practice or purposes of the program.

(c) *Timeline for implementation.* At least one conservation practice must be scheduled for completion within the first 12 months of the contract; NRCS may extend this timeframe if NRCS determines that the participant is unable to complete the conservation practice for reasons beyond their control.

(d) *Contract limitation.* Each contract will be limited to no more than $450,000, unless the contract is with an Indian Tribe or the Chief grants a waiver. Contracts related to organic operations are also subject to payment limitations pursuant to § 1466.24(b).

(e) *Waiver to contract limitation.* (1) The Chief may waive the contract limitation set forth in paragraph (d) of this section if the Chief determines that—

(i) The waiver is in the best interests of the program; and

(ii) The contract involves either—

(A) A joint operation,

(B) A group project, such as for the development of an anaerobic digestor or the improvement of privately owned and operated irrigation systems that benefits multiple producers or a large area of land; or

(C) A water management entity for which NRCS has approved a payment limitation waiver.

(2) A contract for which the Chief has granted a waiver to the contract limitation set forth in paragraph (d) of this section shall be limited to no more than $900,000.

(f) *Water conservation and irrigation efficiency projects with water management entities.* NRCS may decline to select an EQIP application from a legal entity who is otherwise eligible under § 1466.6(d) if NRCS determines that the project is better suited to be implemented under the Regional Conservation Partnership Program or 7 CFR part 622.

§ 1466.22 Conservation practice operation and maintenance (O&M).

(a) The contract will incorporate the O&M agreement that addresses the O&M of conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.

(c) Conservation practices installed before the contract execution but included in the contract to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

(d) NRCS may periodically inspect the conservation practice during the contract duration as specified in the O&M agreement to ensure that O&M requirements are being carried out and that the conservation practice is fulfilling its intended objectives.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate manner, NRCS may terminate the contract and request a refund of payments made for that conservation practice under the contract.

§ 1466.23 Payment rates.

(a) *Conservation practices.* NRCS will develop a list of conservation practices eligible for payment under the program, which considers:

(1) The conservation practice cost-effectiveness, implementation efficiency, and innovation;

(2) The degree and effectiveness in treating priority resource concerns;

(3) The number of resource concerns the practice addresses;

(4) The longevity of the practice's conservation benefit;

(5) The conservation practice's ability to assist producers in meeting regulatory requirements; and

(6) Other pertinent local considerations.

(b) *Payment schedules.* The Chief will determine the process and methodology used for development, review, and approval of payment schedules to support accurate and cost-effective delivery of program benefits, including determination of estimated incurred costs and income foregone associated with implementation of all financially-supported conservation practices or activities.

(1) Payment to a participant for performing a practice may not exceed, as determined by NRCS, the maximum payment percentages in paragraphs (b)(1)(i) through (iii) of this section:

(i) Seventy-five percent of the estimated costs incurred by implementing the conservation practice,

(ii) One hundred percent of the estimated income foregone, or

(iii) Both conditions in paragraphs (b)(1)(i) and (ii) of this section, where a producer incurs costs in implementing a conservation practice and foregoes income related to that practice implementation.

(2) In determining the amount and rate of estimated income foregone, NRCS may assign higher significance to conservation practices which promote—

(i) Soil health;

(ii) Water quality and quantity improvement;

(iii) Nutrient management;

(iv) Pest management;

(v) Air quality improvement;

(vi) Wildlife habitat development, including pollinator habitat;

(vii) Invasive species management; or

(viii) Other natural resource concerns of regional or national significance, as determined by NRCS.

(3) Notwithstanding paragraph (b)(1) of this section, a participant that meets the definition of a historically underserved producer under §1466.3 may be awarded the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the estimated costs incurred for implementing the conservation practice.

(4) NRCS shall reduce the payments to a participant through EQIP proportionately below the contracted payment rate established by the Chief, so that the total combined payments for a conservation practice from EQIP and other USDA sources does not exceed 100 percent of the estimated costs incurred for implementing or performing the conservation practice.

(5) When NRCS enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief shall adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice. The formal agreement must be approved by NRCS prior to announcement of the program initiative and adjusted payment rates.

(6) NRCS may provide payments for conservation practices on some or all of the operations of a participant related to organic production and the transition to organic production. Payments may not be provided for any costs associated with organic certification, enterprise costs associated with transition to organic production, or for practices or activities that are eligible for financial assistance under the National Organic Program (7 U.S.C. 6523).

(c) *High priority practices.* (1) NRCS, with input from the State Technical Committee, may designate not more than 10 practices to be eligible for increased payments under paragraph (c)(2) of this section, on the condition that the practice, as determined by NRCS—

(i) Addresses specific causes of impairment relating to excessive nutrients in ground or surface water;

(ii) Addresses the conservation of water, to advance drought mitigation and declining aquifers;

(iii) Meets other environmental priorities and other priority resource concerns identified in habitat or other area restoration plans; or

(iv) Is geographically targeted to address a natural resource concern in a specific watershed.

(2) Notwithstanding paragraph (b) of this section, in the case of a practice designated as high priority under paragraph (c)(1) of this section a participant may receive an increased amount provided the payment does not exceed 90 percent of the incurred costs estimated for the conservation practice.

(d) *Source water protection practices.* Notwithstanding paragraph (b) of this section, in the case of a practice that is a source water protection practice as identified by the Chief, a participant may receive an increased amount provided the payment does not exceed 90 percent of the incurred costs estimated for the practice.

§ 1466.24 EQIP payment restrictions and exceptions.

(a) *EQIP general aggregate payment limitation.* (1) The total amount of financial assistance payments paid to a person or legal entity under this part, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of $450,000, directly or indirectly.

(2) Except as otherwise provided in §1466.6, the limitation in paragraph (a)(1) of this section cannot be waived.

(b) *Organic production aggregate payment limitation.* Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of $140,000.

(c) *Payment eligibility criteria.* To determine eligibility for payments, NRCS will use the criteria in paragraphs (c)(1) through (9) of this section:

(1) The provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility;

(2) Except as otherwise set forth in this part, States, political subdivisions, and entities thereof are not considered to be producers eligible for payment;

(3) In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' tax identification numbers and percentage interest in the joint operation or legal entity, which all legal entities or persons applying, either alone or as part of a joint operation, must provide to be eligible to receive an EQIP payment;

(4) Contracts with Indian Tribes are not subject to payment or contract limitations, provided that—

(i) Indian Tribes certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation,

(ii) Certification provided at the time of enrollment covers the entire contract period, and

(iii) The Tribal entity provides, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations, with the conditions in paragraphs (c)(4)(iii)(A) through (C) of this section:

(A) Payment limitations apply to individual Tribal member(s) when applying and subsequently being granted a contract as an individual(s);

(B) American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(C) Any individual Tribal member who is identified utilizing a unique identification number as an alternative to a tax identification number will utilize only that identifier for all contracts to which the individual Tribal member receives a payment directly or indirectly;

(5) Any cooperative association of producers that markets commodities for producers is not eligible for payment;

(6) NRCS will confirm eligibility for payments in accordance with 7 CFR part 1400, subpart F, Average Adjusted Gross Income Limitation, prior to contract approval;

(7) To be eligible for payments for conservation practices related to organic production or the transition to organic production:

(i) Participants who are USDA certified organic producers will implement conservation practices that are consistent with an approved organic system plan (OSP), and

(ii) Participants who are transitioning to organic production (including participants who are exempt from certification as defined by the Organic Foods Production Act of 1990) will develop an OSP and implement conservation practices that are consistent with OSP requirements and purposes of the program;

(8) A participant is not eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice to address the same resource concern on the same land under any other conservation program administered by USDA; and

(9) Before NRCS approves and issues any EQIP payment, the participant must certify that the conservation practice has been completed in accordance with contract requirements, and NRCS or an approved TSP must certify that the practice has been carried out in accordance with the applicable NRCS FOTG technical standards.

(d) *Advance payments.* (1) Notwithstanding paragraph (c) of this section, with respect to participants who are historically underserved producers, NRCS may issue advance payments of at least 50 percent and not to exceed 100 percent of the anticipated amount of the costs incurred for the purpose of purchasing materials or services to implement a conservation practice.

(2) Eligibility for advance payment is contingent upon the requirement that the participant obtain an NRCS-approved practice design prior to approval of the advance payment.

(3) The participant must expend advanced funds for practice implementation within 90 days from receipt of funds or return the funds to NRCS within a reasonable time as determined by NRCS.

§ 1466.25 Contract modifications and transfers of contract rights.

(a) NRCS may modify a contract, if—

(1) The participant agrees to the modification; and

(2) NRCS determines the modified contract continues to meet the purposes of the program.

(b) NRCS may approve a transfer of the contract if—

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (e) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the EQIP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to

be met despite the original participant's losing control of all or a portion of the land under contract.

(c)(1) Until NRCS approves the transfer of contract rights, the transferee is not a participant in the program and may not receive payment for a conservation practice commenced prior to approval of the contract transfer.

(2) For contract payment purposes, NRCS will consider the transferor to be the participant to whom payments will be made for conservation practices implemented during the pendency of the approval of contract transfer.

(d) NRCS may terminate the entire contract if, within the time specified in the contract, a participant does not provide NRCS with written notice regarding any voluntary or involuntary loss of control of any acreage under the EQIP contract, which includes changes in a participant's ownership structure or corporate form.

(e) Unless NRCS receives timely notice of a loss of control and approves a transfer of contract rights, a participant losing control of any acreage will constitute a violation of the EQIP contract and NRCS may terminate the contract and require a participant to refund all or a portion of any financial assistance provided.

(f) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control is voluntary, the new producer is not eligible or willing to assume responsibilities under the contract (including payment rate eligibility), or the purposes of the program cannot be met.

(g) In the event a conservation practice fails through no fault of the participant, NRCS may issue payments to reestablish the practice, at the rates established in accordance with §1466.23, provided such payments do not exceed the payment limitation requirements as set forth in §1466.24.

(h) In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the EQIP contract—

(1) Terminate the contract;

(2) Make any payments due under this part pursuant to guidance under applicable provisions of 7 CFR parts 707 and 1400 (including payment to successor(s)); or

(3) Take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

§1466.26 Contract violations and terminations.

(a) NRCS may terminate a contract—

(1) Without the consent of the participant where NRCS determines that the participant violated the contract; or

(2) With the consent of the participant if NRCS determines that the termination is in the public interest.

(b)(1) NRCS may allow a participant in a contract terminated in accordance with the provisions of paragraph (a) of this section to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, when forces beyond the participant's control prevented compliance with the contract.

(2) The condition that is the basis for the participant's inability to comply with the contract must not have existed at the time the contract was executed by the participant.

(3) If a participant believes that such a hardship condition exists, the participant may submit a request with NRCS for relief pursuant to this paragraph and any such request must contain documentation sufficient for NRCS to make a determination that this hardship condition exists.

(c)(1) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or documents incorporated by reference into the contract, NRCS may give the participant a reasonable period of time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto.

(2) If a participant continues to be in violation after such reasonable time, NRCS may terminate the EQIP contract in accordance with §1466.26(f).

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination is effective immediately upon a determination by NRCS that the participant—

(1) Submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35; or

(3) Incurred a violation of the contract provisions that cannot be corrected in a timeframe established by NRCS.

(e) If NRCS terminates a contract due to breach of contract, the participant forfeits all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation practice can function independently and is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(2) NRCS may reduce or waive the liquidated damages depending upon the circumstances of the case.

(3) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract.

(4) Any participant whose EQIP contract is terminated under paragraph (d) of this section may be subject to debarment or suspension under 7 CFR part 1407.

(f) NRCS may terminate a contract that provides payments to a participant for conservation practices related to organic production, if NRCS determines that the participant is not implementing practices according to provisions of the contract agreement or does not meet provisions of this part.

Subpart C—Conservation Innovation

§ 1466.30 Definitions.

In addition to the terms defined in § 1466.3, the definitions in this section apply to this subpart:

Eligible entity means, as determined by NRCS:

(1) A third-party private entity the primary business of which is related to agriculture;

(2) A nongovernmental organization with experience working with agricultural producers; or

(3) A governmental organization.

Grant agreement means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law and substantial Federal involvement is not anticipated.

Grant Review Board consists of representatives of NRCS staff as determined by the Chief.

On-Farm Conservation Innovation Trial (OFCIT) agreement means an agreement that governs the relationship between NRCS and the participant for the purposes of OFCIT implementation. An OFCIT agreement may be between either NRCS and a producer or NRCS and an eligible entity.

On-farm conservation research means an investigation conducted to answer a specified conservation-related question using a statistically valid design, while employing farm-scale equipment on farm fields.

Project means the activities as defined within the scope of the grant agreement or cooperative agreement.

Project director means the individual responsible for the technical direction and management of the project as designated in the application.

Technical Peer Review Panel means a panel consisting of Federal and non-Federal technical advisors who possess expertise in a discipline or disciplines deemed important to provide a technical evaluation of project proposals submitted under the funding opportunity announcement.

§ 1466.31 Purpose and scope.

(a) The purpose of Conservation Innovation Grants (CIG) is to stimulate the development and adoption of innovative conservation approaches and technologies, including field research, while leveraging Federal investment in

environmental enhancement and protection in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS administers CIG in accordance with this subpart. Unless otherwise provided for in this subpart, grants under CIG are subject to the provisions of 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) Applications for CIG are accepted from the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(c) NRCS may award grants to applicants either through a national competition or, at the Chief's discretion, separate State-level components, either of which may be offered multiple times each fiscal year.

(d) Applications for CIG should propose innovative projects or activities that—

(1) Demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production;

(2) Promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies;

(3) Lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides or to the private sector.

(e) For NRCS to consider a proposal eligible for CIG funding, the applicant must clearly demonstrate the innovative features of the proposed technology or approach.

(f) An applicant may demonstrate the innovative features of the proposed technology or approach through a variety of means, such as by establishing that it—

(1) Uses a technology or approach that was studied sufficiently to indicate a high probability for success;

(2) Demonstrates, evaluates, and verifies the effectiveness, utility, affordability, and usability of natural resource conservation technologies and approaches in the field;

(3) Adapts and transfers conservation technologies, management, practices, systems, approaches, and incentive systems to improve performance and encourage adoption; or

(4) Introduces proven conservation technologies and approaches to a geographic area or agricultural sector where that technology or approach is not currently in use.

(g) Projects or activities under CIG shall comply with all applicable Federal, Tribal, State, and local laws and regulations throughout the duration of the project.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67647, Oct. 26, 2020]

§ 1466.32 Conservation innovation grant funding.

(a) *General guidelines.* The guidelines in paragraphs (a)(1) through (5) of this section apply for national-level CIG awards:

(1) CIG funding is available for single- or multi-year projects.

(2) The Chief will determine the funding level for CIG on an annual basis.

(3) CIG funding is made available from EQIP funds made available for EQIP.

(4) The Chief may establish funding limits for individual grants.

(5) The Chief will publicly announce funding for CIG.

(b) *Project or activity funding.* (1) Selected applicants may receive grants or cooperative agreements of up to 50 percent of the total project cost, not to exceed the federal project cap.

(2) Applicants must provide non-federal funding at least equal to the amount of federal funds requested.

(3) Non-federal funds must be derived from cash or in-kind sources.

(c) *Authority to reduce matching requirement.* The Chief may reduce the matching requirements of paragraphs (b)(1) and (2) of this section, provided that the applicant is:

(1) An historically underserved producer;

(2) A community-based organization comprised of, representing, or exclusively working with historically underserved producers on a CIG project;

(3) Developing an innovative conservation approach or technology specifically targeting historically underserved producers' unique needs and limitations; or

(4) An 1890 or 1994 land grant institution (7 U.S.C. 3222 *et seq.*), Hispanic-serving institution (20 U.S.C. 1101a), or other minority-serving institution, such as an historically Black college or university (20 U.S.C. 1061), a tribally controlled college or university (25 U.S.C. 1801), or Asian American and Pacific Islander-serving institution (20 U.S.C. 1059g).

(d) *Limitation to funding technical assistance.* CIG provides financial assistance to grantees. Procurement of any technical assistance to agricultural producers required to carry out a project is the responsibility of the grantee. A Federal technical representative designated by NRCS will provide technical oversight for grant projects.

(e) *Set-aside.* NRCS may set aside up to 10 percent of the total funds available for CIG for applications from historically underserved producers, or a community-based organization comprised of, representing, or exclusively working with these producers on a CIG project.

[84 FR 69280, Dec. 17, 2019, as amended at 85 FR 67648, Oct. 26, 2020]

§ 1466.33 Conservation innovation grant administration.

(a) CIG applications must describe the use of innovative approaches or technologies to address announced national or State program priorities.

(b) NRCS may consider as eligible for CIG any individual or non-federal entity; however, all agricultural producers receiving a direct or indirect payment through participation in a CIG project to address announced national or State program priorities must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions of 7 CFR part 12;

(2) Be a producer as determined by NRCS; and

(3) Have control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land administered by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control.

(c) NRCS will annually publish detailed guidance on how to apply for the grants competition(s) to address announced national or State program priorities.

§ 1466.34 Award determinations.

(a) A peer review panel evaluates completed applications based on the application evaluation criteria that address announced national or State program priorities.

(b) The peer review panel forwards compiled application evaluations to a Grant Review Board (Board).

(c) The Board reviews the peer review panel evaluations and considers review comments from State Conservationists. The Board then makes recommendations for awards to the Chief, who makes final selections.

(d) The NRCS National Headquarters makes a grant or cooperative agreement award after the Chief selects a grantee and the grantee agrees to the terms and conditions of the NRCS grant or cooperative agreement document.

§ 1466.35 State-level conservation innovation grant component.

(a) NRCS has the option of implementing a State-level CIG component. Except as otherwise indicated of this section, State-level CIG awards follows the requirements of this subpart for national-level CIG awards.

(b) Funding availability, application, and submission information for State competitions are announced through public notices separately from the national program and emphasize projects that cover limited geographic areas including individual farms, multicounty areas, or small watersheds.

(c) The State Conservationist determines the funding level for the State CIG competition and creates a review process for applications that considers various relevant criteria, including any potential conflicts of interest.

(d) NRCS may choose to adhere to the CIG national priorities or select other priority resource concerns.

§ 1466.36 Intellectual property.

(a) This section applies to all CIG awardees under this subpart.

(b) Allocation of rights to patents and inventions shall be in accordance with 2 CFR part 200.

(c) Small businesses may retain the principal worldwide patent rights to any invention developed with the support of USDA.

(d) USDA may—

(1) Receive a royalty-free license for Federal Government use,

(2) Reserve the right to require the patentee to license others in certain circumstances, and

(3) Require that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

§ 1466.37 On-Farm Conservation Innovation Trials.

(a) *Purpose.* The purpose of the On-Farm Conservation Innovation Trials (OFCIT) under this section is for NRCS to facilitate and incentivize experimentation and testing of new and innovative conservation approaches on farms in a diversity of geographic regions and on multiple scales.

(b) *Eligibility determinations.* When determining eligibility for a private or nongovernmental organization, whether or not that organization is operated for profit, to enroll in OFCIT, NRCS may consider multiple factors including—

(1) The extent to which the organization conducts business that is related to agriculture;

(2) The quantity and quality of experience the organization has working with agricultural producers; or

(3) Other factors related to the organization's likelihood to succeed or the proposed trial's likelihood to fulfill the purpose of OFCIT, as determined by the Chief.

(c) *Agreements with eligible entities.* An OFCIT agreement with an eligible entity shall contain provisions indicating how NRCS or the eligible entity shall provide technical assistance to producers.

(d) *Innovation determinations.* Notwithstanding any limitation in § 1466.31(f) of this subpart, when determining whether to approve of a proposed conservation approach as new or innovative, NRCS may consider multiple factors including—

(1) The extent to which the proposed conservation approach makes use of new or innovative conservation practices, systems, or technology;

(2) The extent to which the proposed conservation approach applies conservation practices, systems, or technology in new or innovative ways, geographic regions, or agricultural sectors; or

(3) The extent to which the proposed conservation approach uses new or innovative processes or financing for implementing conservation practices or activities.

(e) *Requirements for producers.* When considering whether to enroll the land of a producer under an OFCIT agreement, NRCS first determines that—

(1) The participating producer complies with the highly erodible land and wetland conservation provisions of 7 CFR part 12;

(2) The producer controls the land for the term of the proposed OFCIT agreement, unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(3) The producer is within the income limitations set forth in part 1400, subpart F of this chapter; and

(4) The land subject to the project proposal meets the definition of eligible land under § 1466.3.

(f) *Restriction on administrative cost.* None of the funds made available to carry out this section may be used to pay for the administrative expenses of an eligible entity.

(g) *OFCIT agreement period.* (1) An OFCIT agreement shall be for a period of at least 3 years, unless the Chief determines that a longer period is necessary.

(2) The contract period in excess of 3 years shall be no longer than reasonably and foreseeably necessary to fulfill the purpose of OFCIT, as determined by the Chief.

(3) When determining whether to set a contract period longer than 3 years,

NRCS shall consider whether such a period is appropriate including whether the period supports—

(i) Adaptive management over multiple crops years; and

(ii) Adequate data collection and analysis by a producer or eligible entity to report the natural resource and agricultural production benefits of the new or innovative conservation approaches to the Secretary.

(h) *Data collection.* For all OFCIT contracts, NRCS shall ensure that appropriate data is collected and analyzed while respecting relevant privacy safeguards by transforming the data into statistical or aggregated form so as not to include any identifiable or personal information of individual producers.

(i) *OFCIT payments.* Pursuant to an OFCIT agreement, NRCS may provide—

(1) Technical assistance to a participating producer or eligible entity with respect to the design, installation, and management of the new or innovative conservation approaches;

(2) Technical assistance to a participating eligible entity with respect to data analyses of the OFCIT; and

(3) Financial assistance to a participating producer (either directly or through an eligible entity) that may include payments to compensate for income foregone, as appropriate to address the increased economic risk potentially associated with new or innovative conservation approaches:

(j) *Absence of payment limitation.* Neither the contract payment limitation set forth in §1466.22 nor the aggregate payment limitation set forth in §1466.24 shall apply to OFCIT agreements.

§ 1466.38 Soil Health Demonstration trial.

(a) The Soil Health Demonstration (SHD) shall make use of the OFCIT process, including eligibility requirements, and funding set forth in §1466.37 to provide incentives to producers to implement conservation practices that improve soil health, increase carbon levels in the soil, or both.

(b) In carrying out SHD, NRCS shall coordinate with eligible entities to establish protocols for measuring carbon levels in the soil and testing carbon levels on land where conservation practices described in paragraph (a) of this section were applied to evaluate gains in soil health as a result of the practices implemented by the producers in the soil health demonstration trial.

(c) For each SHD contract, NRCS shall ensure that appropriate data is collected and analyzed while respecting relevant privacy safeguards by transforming the data into statistical or aggregated form so as not to include any identifiable or personal information of individual producers.

Subpart D—Incentive Contracts

§ 1466.40 High priority areas.

(a) The Chief shall, in consultation with the State Technical Committee, develop a set of high priority areas for each State.

(b) The set of high priority areas described in paragraph (a) of this section must encompass every region within the State.

(c) A high priority area may encompass an entire State or overlap with other high priority areas such that a given parcel of land may exist in multiple high priority areas.

(d) The Chief, in consultation with the State Technical Committee, shall identify up to three priority resource concerns for each land use within a given high priority area.

(e) An identification under paragraph (d) of this section of a priority resource concern for one land use shall not preclude NRCS from identifying the same priority resource concern for a different land use within the same high priority area.

(f) NRCS shall identify which practices qualify as incentive practices for each land use within each high priority area based on the priority resource concern(s) identified for that land use.

(g) NRCS shall make public all determinations made under this section.

§ 1466.41 Incentive contract selection.

(a) NRCS will give priority to applications that address eligible priority resource concerns identified under §1466.40.

(b) NRCS will evaluate applications relative to other applications for similar agriculture and forest operations.

(c) NRCS shall not select an application for an incentive contract that does not contain at least one qualifying incentive practice as identified under § 1466.40.

§ 1466.42 Incentive contract requirements.

(a) *Requirement for a contract.* (1) In order for a participant to receive incentive payments, the participant must enter into an incentive contract agreeing to implement one or more incentive practices.

(2) Payment for technical services may be included in the contract pursuant to requirements of this part.

(b) *Incentive contract terms.* An incentive contract will—

(1) Identify all incentive practices to be implemented, the timing of practice installation, responsibilities of the participant, the O&M requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a period as set forth in § 1466.43;

(3) Specify any other provision determined necessary or appropriate by NRCS to achieve the technical requirements of a practice or purposes of the program.

(c) *Termination of the incentive contract.* NRCS may terminate an incentive contract consistent with the provisions of § 1466.26.

§ 1466.43 Incentive contract period.

(a) NRCS shall apply science-based criteria to determine an appropriate contract period to achieve desired conservation benefits.

(b) The period determined as appropriate under paragraph (a) of this section shall not be less than 5 years nor exceed 10 years.

§ 1466.44 Incentive payment rates and restrictions.

(a) *Aggregate payment limitation.* (1) Notwithstanding the payment limitation in § 1466.24, the total amount of payments paid to a person or legal entity under this subpart, during the period of fiscal years 2019 through 2023, may not exceed an aggregate of $200,000, directly or indirectly.

(2) Payments received for technical assistance will be excluded from the limitation in paragraph (a)(1) of this section.

(3) The limitation in paragraph (a)(1) of this section cannot be waived.

(b) *Restrictions and exceptions.* Except as otherwise indicated in paragraph (a) of this section, incentive contracts are subject to the payment restrictions and exceptions as set forth in § 1466.24.

(c) *Implementation payments.* The payment rates for implementation of incentive practices shall be identical to the payment rates for practice implementation as set forth in § 1466.23.

(d) *Annual payments.* In addition to the payment for implementation set forth in paragraph (c) of this section, NRCS may award annual payments through incentive contracts to compensate the participant for up to 100 percent of the costs of—

(1) O&M of the incentive practice; and

(2) Income foregone by the participant, including payments to address, as appropriate—

(i) Increased economic risk,

(ii) Loss in revenue due to anticipated reductions in yield, and

(iii) Economic losses during transition to a resource-conserving cropping system, resource-conserving crop rotation, or resource-conserving land uses.

Subpart E—General Administration

§ 1466.50 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with 7 CFR parts 11 and 614. Determination in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.51 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for

obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.52 Access to operating unit.

An authorized NRCS representative will have the right to enter land under an NRCS conservation program contract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to contract performance. Access will include the right to provide technical assistance, determine eligibility, inspect any work undertaken under the contract, and collect information necessary to evaluate the conservation practice performance specified in the contract. The NRCS representative will make an effort to contact the participant prior to the exercising this provision.

§ 1466.53 Equitable relief.

(a) If a participant relied upon the advice or action of an authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of an NRCS representative resulted in ineligibility or a program violation, but the participant believes that a good-faith effort to comply was made, the participant may request equitable relief under 7 CFR 635.3.

(b) If, during the term of an EQIP contract, a participant has been found in violation of a provision of the EQIP contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.

(c) NRCS reserves the right to correct all errors in entering data or the results of computations in an EQIP contract. If a participant does not agree to such corrections, NRCS shall terminate the contract.

§ 1466.54 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, joint venture, legal entity, or Tribe will be made without regard to questions of this title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will be applicable to contract payments.

(b) EQIP participants may assign any payments in accordance with part 1404 of this chapter.

§ 1466.55 Misrepresentation and scheme or device.

(a) A person, joint operation, legal entity, or Indian Tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest, determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly—

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination, will refund to NRCS all payments, plus interest,

determined in accordance with 7 CFR part 1403, received by such producer with respect to all contracts. The producer's interest in all contracts will be terminated.

§ 1466.56 Environmental credits for conservation improvements.

(a) A participant in EQIP may achieve environmental benefits that may qualify for environmental credits under an environmental credit-trading program. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that EQIP purposes are met. In addition, any requirements or standards of an environmental market program in which an EQIP participant simultaneously enrolls to receive environmental credits must be compatible with the purposes and requirements of the EQIP contract and with this part.

(b) The participant must meet all O&M requirements for EQIP-funded activities, consistent with §§1466.21 and 1466.22. Where activities required under an environmental credit agreement may affect the land and conservation practices under an EQIP contract, NRCS recommends that EQIP participants request assistance with the development of a compatibility assessment prior to entering into any credit agreement. The EQIP contract may be modified in accordance with policies outlined in §1466.25, provided the modification meets EQIP purposes and is in compliance with this part.

(c) EQIP participants may not use EQIP funds to implement conservation practices and activities that the participant is required to establish as a result of a court order. EQIP funds may not be used to satisfy any mitigation requirement for which the EQIP participant is responsible.

PART 1467—WETLANDS RESERVE PROGRAM

Sec.

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AUTHORITY: 16 U.S.C. 3837 *et seq.*

SOURCE: 74 FR 2328, Jan. 15, 2009, unless otherwise noted.

§ 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1467.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part that is required by applicable law.

(c) The State Conservationist will seek advice from the State Technical Committee on the development of the geographic area rate caps of compensation for an easement, a priority ranking process, and related policy matters.

(d) NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to

other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS to carry out such delegated responsibilities.

(e) NRCS may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance.

(f) NRCS shall consult with the U.S. Department of the Interior's Fish and Wildlife Service (FWS) at the local level in determinations of land eligibility and as appropriate throughout the program implementation process. NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations shall compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.

(g) The Chief may allocate funds for purposes related to: Encouraging enrollment by historically underserved producers as authorized by 16 U.S.C. 3844; special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or, for other goals of the WRP found in this part. NRCS may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

§ 1467.3 Definitions.

The following definitions are applicable to this part:

30-year Contract means a contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Acreage Owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe or the Bureau of Indian Affairs (BIA).

Activity means an action other than a conservation practice that is included in the WRPO or restoration cost-share agreement, as applicable, and that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an easement, contract, or restoration cost-share agreement.

Agreement means the document that specifies the obligations and rights of NRCS and any person or legal entity who is participating in the program.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters; or sugarcane planted and produced in a State.

Beginning Farmer or Rancher means an individual or legal entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of a legal entity, and who will materially and substantially participate in the operation of the farm or ranch. In the case of an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located. In the case of a legal entity or joint operation, material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for

which the Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation district means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''natural resource district,'' ''land conservation committee,'' or a similar name.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831–3836.

Contract means the legal document that specifies the obligations and rights of NRCS and any person or legal entity accepted to participate in the program. A WRP contract is an agreement for the transfer of assistance from NRCS to the participant for conducting the prescribed program implementation actions.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or to have the effect of, making the production of an agricultural commodity possible if such production would not have been possible but for such action; and before such action such land was wetland; and such land was neither highly erodible land nor highly erodible cropland.

Cost-share payment means the payment made by NRCS to a participant to carry out conservation practices and to achieve the protection of wetland functions and values, including necessary activities, as set forth in the Wetlands Reserve Plan of Operations (WRPO).

Easement means a reserved interest easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP, or the consideration paid to an Indian Tribe or tribal members for entering into 30-year contracts.

Easement Restoration Agreement means the agreement used to implement the Wetland Restoration Plan of Operations for projects enrolled through the permanent easement, 30-year easement, or 30-year contract enrollment options.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Historically Underserved Producer means a beginning, limited resource, or socially disadvantaged farmer or rancher.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Landowner means a person or legal entity having legal ownership of eligible land. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants. The term landowner includes trust holders of acreage owned by Indian Tribes.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which,

with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Legal entity means an entity that is created under Federal or State law and that owns land or an agricultural commodity; or produces an agricultural commodity.

Limited Resource Farmer or Rancher means a person with direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)), and who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using U.S. Department of Commerce data).

Maintenance means work performed to keep the enrolled area functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices on enrolled lands, as approved by NRCS.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, including when NRCS carries out program implementation using the funds, facilities, or authorities of the Commodity Credit Corporation (CCC).

Option agreement to purchase means the legal document that is the equivalent of a real estate option contract for purchasing land. The landowner signs the option agreement to purchase, which is authorization for NRCS to proceed with the easement acquisition process, and to incur costs for surveys, where applicable, title clearance and closing procedures on the easement. The option becomes a contract for sale and obligates CCC funding after it is executed by NRCS and transmitted to the landowner.

Participant means a person or legal entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an option to purchase agreement, 30-year contract, or restoration cost-share agreement, and the associated WRPO.

Permanent easement means an easement that lasts in perpetuity.

Person means a natural person, a legal entity, or an Indian Tribe, but does not include governments or their political subdivisions.

Prairie Pothole Region means the counties designated as part of the Prairie Pothole National Priority Area for the Conservation Reserve Program (CRP) as of June 18, 2008.

Private land means land that is not owned by a governmental entity, and includes acreage owned by Indian Tribes, as defined in this Part.

Restoration Cost-Share Agreement means the legal document that describes the rights and obligations of participants who have been accepted to participate in WRP restoration cost-share enrollment option that is used to implement conservation practices and activities to protect, restore, or enhance wetlands values and functions to achieve the purposes of the program. The restoration cost-share agreement is an agreement between NRCS and the participant to share in the costs of implementing the Wetland Restoration Plan of Operations.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture (USDA) in a State pursuant to 16 U.S.C. 3861.

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the wetland restoration area.

Wetlands Reserve Plan of Operations (WRPO) means the conservation plan that identifies how the wetland functions and values will be restored, improved, and protected and which is approved by NRCS.

§ 1467.4 Program requirements.

(a) *General.* (1) Under the WRP, NRCS may purchase conservation easements from, or enter into 30-year contracts or restoration cost-share agreements with, eligible landowners who voluntarily cooperate to restore, protect, or enhance wetlands on eligible private and Tribal lands. The 30-year contract enrollment option is only available to acreage owned by Indian Tribes.

(2) To participate in WRP, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. NRCS may provide cost-share assistance through a restoration cost-share agreement or an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. For easement transactions, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS, or other designee.

(b) *Acreage limitations.* (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired through the WRP.

(2) NRCS and FSA shall concur before a waiver of the 25 percent limit of this paragraph can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* To be eligible to enroll in the WRP, a person, legal entity, or Indian Tribe must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation

provisions at Subpart G of 7 CFR part 1400, and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) For easement applications, have been the landowner of such land for the 7-year period prior to the time the land is determined eligible for enrollment unless it is determined by the State Conservationist that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner;

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law; or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program, such as demonstration of status as a beginning farmer or rancher.

(3) Agree to provide such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) When a parcel of land that has been accepted for enrollment into the WRP is sold or transferred prior to the easement being perfected, the application or option agreement to purchase will be cancelled and acres will be removed from enrollment. If the new landowner wishes to continue enrollment, a new application must be filed so that all eligibility criteria may be examined and documented.

(e) *Land eligibility*. (1) Only private land or land owned by Indian Tribes may be considered for enrollment into WRP.

(2) NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

(3) Land shall only be considered eligible for enrollment in the WRP if NRCS determines, in consultation with the FWS, that:

(i) The enrollment of such land maximizes wildlife benefits and wetland values and functions;

(ii) Such land is—

(A) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands; or

(B) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, together with the adjacent land, where practicable, that is functionally dependent on the cropland or grassland; and

(iii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration.

(4) Land may be considered farmed wetland or converted wetland under paragraph (3)(ii)(A) of this section if such land is identified by NRCS as:

(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values; or

(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored.

(5) Land under paragraph (e)(3)(ii)(B) of this section may be considered for enrollment into 30-year easements if it meets the criteria under paragraph (e)(3) of this section, it is located in the Prairie Pothole Region as defined under §1467.3 of this part, and the size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(6) If land offered for enrollment is determined eligible under paragraph (e)(3) and (e)(5) of this section, then

NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and:

(i) Is farmed wetland and adjoining lands enrolled in CRP, with the highest wetland functions and values, and is likely to return to production after it leaves CRP;

(ii) Is a riparian area along streams or other waterways that links or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement; or

(iii) Land adjacent to the eligible land that would contribute significantly to wetland functions and values, such as buffer areas, wetland creations, non-cropped natural wetlands, and restored wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution.

(7) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for program purposes and otherwise promote and enhance program objectives, as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in WRP, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The following land is not eligible for enrollment in the WRP:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land that contains timber stands established under a CRP contract or pastureland established to trees under a CRP contract;

(3) Lands owned by an agency of the United States, other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in WRP; and

(6) Lands where implementation of restoration practices would be undermined due to on-site or off-site conditions, such as risk of hazardous substances either on-site or off-site, proposed or existing rights of way, either on-site or off-site, for infrastructure development, or adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§ 1467.5 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP.

(b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities, such as the development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ 1467.6 Establishing priority for enrollment of properties in WRP.

(a) When evaluating easement, 30-year contract, or restoration cost-share agreement offers from landowners, the NRCS, with advice from the State Technical Committee, may consider:

(1) The conservation benefits of obtaining an easement, or other interest in the land;

(2) The cost effectiveness of each easement or other interest in eligible land, so as to maximize the environmental benefits per dollar expended;

(3) Whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of the easement program would be achieved on the land;

(5) The productivity of the land; and

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS shall give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. The State Conservationist may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

(e)(1) The Chief will conduct an assessment during fiscal year 2008 and each subsequent fiscal year for the purpose of determining the interest and allocations for the Prairie Pothole Region to enroll land determined eligible under §1467.4(d)(5) of this part into 30-year easements. Annually, the Chief will provide specific instructions for the assessment in writing to the applicable State Conservationists.

(2) The Chief will make an adjustment to the allocation for an applicable State for a fiscal year, based on the results of the assessment conducted under paragraph (e)(1) of this section for the State during the previous fiscal year.

§1467.7 Enrollment process.

(a) *Tentative Selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in WRP, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land unless otherwise notified by the landowner.

(c) *Acceptance and effect of offer of enrollment*—(1) *Easement.* For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement compensation amount; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the option agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *Restoration cost-share agreement.* For applications requesting enrollment through the restoration cost-share agreement option, a restoration cost-share agreement shall be presented by NRCS to the landowner, which will describe the enrolled area, the agreement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(3) *30-year contract.* For applications requesting enrollment through the 30-year contract option, a 30-year contract shall be presented by NRCS to the landowner, which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the 30-year contract. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment document establishes the terms of enrollment consistent with the terms and conditions of this part, and identifies the:

(i) Scope of the agreement between NRCS and the landowner;

(ii) Basis for NRCS to obligate funds; and

(iii) Nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

(2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land as set forth under § 1467.11;

(ii) Implementing a WRPO which provides for the restoration and protection of the functions and values of wetlands;

(iii) Recording the easement in accordance with applicable State law; and

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, sale of the land, risk of hazardous substance contamination, or other reasons. The offer of enrollment to the landowner shall be void if not executed by the landowner within the time specified.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§ 1467.8 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.* (1) Compensation for an easement under this part shall be made in cash in such amount as is agreed to and specified in the option agreement to purchase or 30-year contract.

(2) Payments for non-permanent easements or 30-year contracts shall be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS shall pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based on an area-wide market analysis or survey;

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section; or

(iii) The landowner offer.

(4) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of

being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2)(i) For easements or 30-year contracts valued at $500,000 or less, NRCS will provide compensation in up to 30 annual payments, as requested by the participant, as specified in the option agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than $500,000, the Secretary may provide compensation in at least 5, but not more than 30 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the option agreement to purchase, warranty easement deed, or 30-year contract between NRCS and the participant.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse participants for their fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as determined by NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse participants for reasonable expenses, if incurred.

(d) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a participant may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the participant. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(e) *Per acre basis calculations.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 1467.9 Wetlands Reserve Enhancement Program.

(a) *Wetlands Reserve Enhancement Program (WREP).* (1) The purpose of WREP is to target and leverage resources to address high priority wetlands protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes.

(2) Funding for WREP agreements will be announced in the FEDERAL REGISTER.

(i) The announcement will provide details on the priorities for funding, required level of partner matching funds, ranking criteria, level of available funding, and additional criteria as determined by the Chief.

(ii) The Chief will determine the funding level for WREP on an annual basis. Funds for WREP are derived from funds available for WRP.

(3) Proposals will be submitted to the State Conservationist of the State in which the majority of the project area resides.

(i) State Conservationists will evaluate proposals based on the ranking criteria established in the announcement and provide proposals recommended for funding to the Chief.

(ii) The Chief will evaluate proposals recommended for funding and make final funding selections, in accordance with ranking factors identified in the announcement.

(4) Selected proposals and associated funding will be provided to the State Conservationist to enter into WREP agreements with the eligible partner to carry out the project.

(b) *Reserved Rights Pilot.* (1) The Chief shall carry out a reserved rights pilot subject to the requirements established in this part.

(2) Under the reserved rights pilot, a landowner may reserve grazing rights

in the warranty easement deed or 30-year contract, if the State Conservationist determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the easement or 30-year contract; and

(ii) Is consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established; and

(iii) Complies with a WRPO developed with NRCS.

(3) The State Conservationist will provide public notice of the availability of the reserved rights pilot and the reserved rights template deed or 30-year contract, approved by the Chief, to be used in the pilot.

(4) Compensation for easements or 30-year contracts entered into under the reserved rights pilot will be based on the method described in § 1467.8 with the following exceptions:

(i) Section 1467.8(a)(3)(i) is adjusted to reduce the fair market value of the land by an amount equal to the value of the retained grazing rights as determined by a Uniform Standards for Professional Appraisal Practices appraisal or a market survey; and

(ii) Section 1467.8(a)(3)(ii) is adjusted to reduce the geographic area rate cap determined as described in § 1467.8(a)(4) by an amount equal to the value of the retained grazing rights.

§ 1467.10 Cost-share payments.

(a) NRCS may share the cost with participants of implementing the WRPO on the enrolled land. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement, 30-year contract, or restoration cost-share agreement, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs.

(3) The total amount of payments that a person or legal entity may receive, directly or indirectly, for one or more restoration cost-share agreements, for any year, may not exceed $50,000.

(b) Cost-share payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO. Identified conservation practices or activities may be implemented by the participant, NRCS, or other NRCS designee.

(c) Cost-share payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional cost-share assistance from other public or private organizations as long as the conservation practices or activities funded are in compliance with this part. In no event shall the participant receive an amount that exceeds 100 percent of the total actual cost of the restoration.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§ 1467.11 Easement and 30-year contract participation requirements.

(a) *Easement requirements.* (1) To enroll land in WRP through the permanent or non-permanent easement option, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of its term, the easement shall require, at a minimum, that the participant, and the participant's heirs, successors and assigns, shall, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance,

and management of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement shall grant to the United States, through NRCS:

(i) A right of access to the easement area;

(ii) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established;

(iii) All rights, title and interest in the easement area; and

(iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.

(3) The participant shall convey title to the easement in a manner that is acceptable to NRCS. The participant shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(4) The participant shall:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated contract or agreement;

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the FSA;

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(v) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any participant responsibilities on the easement area; and

(vi) Agree that each person or legal entity that is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll land in WRP through the 30-year contract option, a landowner shall enter into a contract with NRCS. The contract shall require that the enrolled area be maintained in accordance with WRP goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the 30-year duration, the contract shall require, at a minimum, that the participant, and the participant's heirs, successors and assigns, shall, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the WRPO. In addition, the contract shall grant to NRCS:

(i) A right of access to the contract area;

(ii) The right to permit compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the contract was established; and

(iii) The right to restore, protect, enhance, maintain, and manage activities on the enrolled area.

(3) The participant shall:

(i) Comply with the terms of the contract;

(ii) Comply with all terms and conditions of any associated agreement;

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the enrolled area in accordance with the terms of the contract and related agreements;

(iv) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any participant responsibilities on the enrolled area;

(v) Agree that each person or legal entity that is subject to the contract shall be jointly and severally responsible for compliance with the contract

and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

§ 1467.12 The WRPO development.

(a) The development of the WRPO will be made through the local NRCS representative, in consultation with the State Technical Committee, with consideration of site-specific technical input from FWS and the Conservation District.

(b) The WRPO will specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. The WRPO will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the on-site alternations and the off-site watershed conditions that adversely impact the hydrology and associated wildlife and wetland functions and values. NRCS will review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26285, June 2, 2009]

§ 1467.13 Modifications.

(a) *Easements.* (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the participant. The Chief will consult with FWS and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement, which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired or when adverse impacts will be mitigated by enrollment and restoration of other lands that provide greater wetland functions and values at no additional cost to the government.

(4) Modifications must result in equal or greater environmental and economic values to the United States and address a compelling public need, as determined by the Chief.

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the participant and with consideration of site specific technical input from the FWS and the Conservation District. Any WRPO modification must meet WRP regulations and program objectives, comply with the definition of wetland restoration as defined in § 1467.3, must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values to the United States.

§ 1467.14 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the enrollment of the easement, 30-year contract, or restoration cost-share agreement contract, including the landowner entering into a contract or purchase agreement to sell the land subject to offer, shall void the offer of enrollment.

(b) *Payments to landowners.* For easements with multiple annual payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS shall bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1467.15 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement, 30-year contract, or any restoration cost-share agreement involving the participant, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement or contractual obligations.

(3) At any time there is a material breach of the easement covenants or any associated agreement, the easement shall remain in force and NRCS may withhold or require the refund of any easement and cost-share payments owed or paid to participants. Such withheld or refunded funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement. This remedy is in addition to any and all legal or equitable remedies available to the United States under applicable Federal or State law.

(4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *30-year Contract and Restoration Cost-Share Agreement violations.* (1) If the NRCS determines that a participant is in violation of the terms of a 30-year contract, or restoration cost-share agreement, or documents incorporated by reference into the 30-year contract or restoration cost-share agreement, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the 30-year contract or restoration cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a restoration cost-share agreement or 30-year contract termination is effective immediately upon a determination by the State Conservationist that the participant has:

(i) Submitted false information;

(ii) Filed a false claim;

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part; or

(iv) Taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a restoration cost-share agreement or 30-year contract, the participant will forfeit all rights for future payments under the restoration cost-share agreement or 30-year contract, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

§ 1467.16 Payments not subject to claims.

Any cost-share, contract, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1467.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1467.18 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any administrative action taken under this part, the person must

exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final Agency action except a decision of the Chief of the NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by the NRCS in furtherance of its federally held property rights are under the jurisdiction of the federal courts and not subject to review under administrative appeal regulations.

§ 1467.19 Scheme and device.

(a) If it is determined by the NRCS that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1467.20 Market-based conservation initiatives.

(a) *Acceptance and use of contributions.* Section 1241(e) of the Food Security Act of 1985, as amended, (16 U.S.C. 3841(e)), allows the Chief to accept and use contributions of non-Federal funds to support the purposes of the program. These funds shall be available without further appropriation and until expended, to carry out the program.

(b) *Ecosystem Services Credits for Conservation Improvements.* (1) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through WRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that the requirements of the WRPO, contract, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a WRP easement, 30-year contract, or restoration cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

(2) Section 1222(f)(2) of the Food Security Act of 1985 as amended, does not allow wetlands restored with Federal funds to be utilized for Food Security Act wetland mitigation purposes.

PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

Subpart A—General Provisions

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865–3865d.

SOURCE: 85 FR 571, Jan. 6, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS). ACEP purposes include:

(1) Combining the purposes and coordinating the functions of the Wetlands Reserve Program established under section 1237, the Grassland Reserve Program established under section 1238N, and the Farmland Protection Program established under section 1238I, as such sections were in effect on the day before the date of enactment of the Agricultural Act of 2014;

(2) Restoring, protecting, and enhancing wetlands on eligible land;

(3) Protecting the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and

(4) Protecting grazing uses and related conservation values by restoring or conserving eligible land.

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the predecessor programs Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

§ 1468.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS may seek advice from the State technical committee on considerations relating to implementation and technical aspects of the program, such as identification of lands of statewide importance or special significance, review of State-level geographic area rate caps, development of ranking criteria, wetland restoration objectives, management considerations, including compatible use criteria, or related technical matters.

(c) NRCS may obtain input from Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(d) Applications may be submitted on a continuous basis or in response to specific program solicitations. NRCS

may announce one or more application cut-off dates for funding consideration within a given fiscal year.

(e) The Chief may allocate funds for purposes related to: Encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian Tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; implementing landscape and related initiatives, special pilot programs for easement management and monitoring; agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans for ACEP–WRE or conservation plans for ACEP–ALE; or for other goals of the ACEP found in this part.

(f) NRCS may delegate at any time its ACEP–WRE monitoring or management responsibilities to conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(g) NRCS may delegate at any time its ACEP–WRE monitoring, management, or enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(h) For ACEP–ALEs, the easement holder is responsible to ensure the easement is monitored on an annual basis and to provide annually to NRCS a monitoring report. For ACEP–WREs, NRCS or its delegate, is responsible to monitor the easement on an annual basis and comply with applicable reporting requirements.

(i) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part.

(j) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision is necessary to further the purposes of ACEP as part of an ACEP–ALE buy-protect-sell transaction or under the ACEP–WRE wetland reserve enhancement partnership option. The waiver must further ACEP purposes and be consistent with the specific ACEP–WRE or ACEP–ALE conservation purposes and objectives. No waiver will result in reducing the quality of wetland functions and values restored under ACEP–WRE, or the protection of agricultural viability under ACEP–ALE.

(k) To assist in ACEP implementation the Chief may also waive the applicability of the adjusted gross income limitation as authorized by section 1001D(b)(3) of the Food Security Act of 1985 for participating landowners if the Chief determines that environmentally sensitive land of special significance would be protected as a result of such waiver.

§ 1468.3 Definitions.

The definitions in this section apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

30-year Contract means an ACEP–WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Access means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

Acreage owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe, or the Bureau of Indian Affairs. This land may be also be referred to as ''Tribal land.''

Agreement means the document that specifies the rights, requirements, and responsibilities of NRCS and any persons, legal entities, or eligible entities participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized

goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, an ALE-agreement, a buy-protect-sell arrangement, a wetland reserve easement restoration agreement, a cooperative agreement, a grant agreement, a partnership agreement, or an interagency agreement.

Agreement to purchase means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the ACEP–WRE acquisition process.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

Agricultural land easement means an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses.

Agricultural land easement plan means a document developed by the eligible entity that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. An agricultural land easement plan includes a description of the farm or ranch management system and the natural resource concerns on the land, describes the conservation measures and practices that may be implemented to address applicable resource concerns for which the easement was enrolled, and incorporates by reference any component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part.

Agricultural uses means those activities defined by a State's farm or ranch land protection program or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, limit future agricultural viability, degrade soils or the agricultural nature of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils, the agricultural nature of the land, or related natural resources.

ALE-agreement means the document that outlines the rights, requirements, roles, and responsibilities of NRCS and eligible entities participating in the program under subpart B, including cost-share payment provisions.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State conservationist, with advice from the State technical committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm, ranch, or non-industrialized private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm, ranch, or NIPF.

(2) In the case of an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, ranch, or NIPF consistent with the practices in the county or State where the farm is located.

(3) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm, ranch, or

NIPF . Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm, ranch, or NIPF would be seriously impaired.

Buy-Protect-Sell transaction means a legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher following conditions specified in this part.

Certified entity means an eligible entity that NRCS has determined to meet the certification requirements in §1468.26 for the purposes of ACEP–ALE.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated the authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency (FSA) has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Commodity Credit Corporation (CCC) is a wholly-owned government corporation within the Department of Agriculture.

Compatible use means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, location, timing, frequency, intensity, and duration limitations prescribed by NRCS.

Conservation plan is for ACEP–ALE the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation-system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and where appropriate, may include conversion of highly erodible cropland to less intensive uses; and

(3) Is developed in accordance with 7 CFR part 12.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the CCC as required by 16 U.S.C. 3831–3836.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

Cost-share payment means the payment made by NRCS to an eligible entity for the purchase of an ACEP–ALE easement as set forth in subpart B of this part.

Dedicated fund means an account held by a certified nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

Easement administration action means an easement subordination, easement modification, easement exchange, or easement termination.

Easement area means the portion of a parcel that is encumbered by an ACEP easement.

Easement exchange means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its rights or interests in an easement which are replaced by similar rights or interests in an easement that

have equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights or interests in an easement, and easement exchanges are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement.

Easement modification means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights or interests in an easement, and easement modifications are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement payment means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP–WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts under ACEP–WRE.

Easement restoration agreement means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract.

Easement subordination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its rights or interests in an easement. NRCS is not required to subordinate any of its rights or interests in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part. As determined by NRCS, the subordination must be in the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

Easement termination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate all or a portion of its rights or interests in an easement. The termination must address a compelling public need for which there is no practicable alternative even with avoidance and minimization of adverse impacts and must facilitate the practical administration of the program. The United States must be provided full compensation for such termination and any costs and damages related to the termination. NRCS is not required to terminate any of its rights or interests in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

Eligible activity means an action other than a conservation practice that has the effect of alleviating problems or improving the condition of the resources, such as ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an ACEP–WRE easement or 30-year contract as identified in the WRPO.

Eligible entity means an Indian Tribe, State government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

Eligible land means private land or acreage owned by Indian Tribes that NRCS has determined to meet the requirements of §1468.20 or §1468.30 of this part.

Fair market value means the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart B or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or areawide market analysis or survey, as established in subpart C.

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include, but is not limited to, specific intra-family succession agreements or business asset transfer strategies to create opportunities for new or beginning farmers or ranchers, veteran farmers or ranchers, or other historically underserved landowners.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, animal, and energy resources applicable to the local area for which it is prepared.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest management plan means a site-specific plan that describes management practices that conserve, protect, or enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a) or other plan approved by the State forester.

Future viability means the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values such as management of the agricultural land easement area consistent with an agricultural land easement plan or adoption of a farm or ranch succession plan.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

Grassland of special environmental significance means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to non-grassland uses or fragmentation; and the land:

(1)(i) Is rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Is improved, naturalized pastureland, rangeland, or wet meadows;

(2)(i) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or

(iii) Provides protection of highly sensitive natural resources as identified by NRCS, in consultation with the State technical committee.

Grasslands management plan means a site-specific plan that describes the grassland resources, the management system and practices that conserve, protect, or enhance the viability of the grassland, and as applicable, the habitat, species, or sensitive natural resources.

Grazing management plan means for ACEP–WRE, a site-specific plan developed as a component of the WRPO that provides for grazing of the grass and grass-like cover while accomplishing the wetland functions and values of the easement area as identified by NRCS.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 54 U.S.C. 300101, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Historically underserved landowner means a beginning, limited resource, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

Imminent harm means easement violations or threatened violations that, as determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established as required by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Land evaluation and site assessment system means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of eligible land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. State and local governments are not eligible as landowners. For ACEP–ALE, nongovernmental organizations and Indian tribes that qualify as eligible entities are not eligible as landowners unless otherwise determined by the Chief following an approved buy-protect-sell transaction.

Lands substantially altered by flooding means agricultural lands where flooding has created wetland hydrologic conditions which, with a high degree of

certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

Limited resource farmer or rancher means either:

(1)(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Maintenance means work performed to keep the wetland reserve easement lands functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work performed to manage, prevent deterioration, repair damage, or replace conservation practices or eligible activities on a wetland reserve easement, as approved or conducted by NRCS.

Monitoring report means a report, the contents of which are formulated and prepared by the easement holder, or their delegate, that accurately documents on an annual basis whether the land subject to easement is in compliance with the terms and conditions of the easement.

Natural Resources Conservation Service (NRCS) means an agency of the U.S. Department of Agriculture (USDA), including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

Nongovernmental organization means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described in—

(i) Section 509(a)(1) and (2) of that Code, or

(ii) Section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Nonindustrial private forest land (NIPF) means rural land, as determined by the NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Other interests in land include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further the agricultural use of the land and other ACEP–ALE purposes.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland or farm and ranch land of statewide and local importance.

Parcel means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

Participant means a person, legal entity, Indian Tribe, native corporation, or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase, an agreement to enter a 30-year contract, or an ALE-agreement.

Pending offer means a written bid, contract, or option between a landowner and an eligible entity for the acquisition of an agricultural conservation easement in perpetuity, or for the maximum duration allowed by State law, before the legal title to these rights has been conveyed for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

Permanent easement means an easement that lasts in perpetuity.

Person means a natural person.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

Private land means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this part.

Right of enforcement means the right of the United States to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For a legal entity, at least 50-percent ownership in the legal entity must be held by socially disadvantaged individuals.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State and includes the directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State technical committee means a committee established under 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by NRCS. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Veteran farmer or rancher means a producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)).

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including—

(1) Habitat for migratory birds and other wildlife, in particular at-risk species.

(2) Protection and improvement of water quality.

(3) Attenuation of water flows due to flood.

(4) The recharge of ground water.

(5) Protection and enhancement of open space and aesthetic quality.

(6) Protection of flora and fauna which contributes to the Nation's natural heritage.

(7) Carbon sequestration.

(8) Contribution to educational and scientific scholarship.

Wetland reserve easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the United States, but the landowner retains those rights, title, and interests in the property which are

specifically reserved to the landowner in the easement deed.

Wetland reserve plan of operations (WRPO) means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, protected, managed, maintained, and monitored to achieve the purposes of the wetland reserve easement enrollment.

Wetland restoration means the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:

(1) The original, native vegetative community and hydrology are, to the extent practical, reestablished; or

(2) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:

(i) Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or

(ii) Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

EDITORIAL NOTE: At 86 FR 8130, Feb. 4, 2021, §1468.3 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 1468.4 Appeals.

(a) *ACEP–ALE eligibility of entities.* An entity which has submitted an ACEP–ALE application to be considered an eligible entity may obtain a review of any administrative determination concerning their eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) *ACEP–WRE applicants and participants.* An applicant or participant in the ACEP–WRE may obtain a review of any administrative determination concerning eligibility for participation or receipt of payment utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(c) *Easement administration and management determinations under ACEP after easement closing.* NRCS determinations that are made pursuant to its rights or interests in an ACEP-funded easement after closing may only be appealed to the State conservationist as specified in the notice provided to the landowner or easement holder when NRCS exercises its rights under the easement. Such determinations are not subject to appeal under 7 CFR parts 11 or 614.

§ 1468.5 Scheme or device.

(a) In addition to other penalties, sanctions, or remedies that may apply, if it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving anyone of a program benefit, or for the purpose of obtaining a payment to which they would otherwise not be entitled.

§ 1468.6 Subordination, exchange, modification, and termination.

(a) After an easement has been recorded, no subordination, modification, exchange, or termination will be made in any interest in land, or portion of such interest, except as approved by the NRCS. NRCS may approve such easement administration actions if NRCS determines, in accordance with the sequencing considerations under the National Environmental Policy Act, that—

(1)(i) The subordination, modification, or exchange action results in no net loss of easement acres, and is in the public interest or will further the practical administration and management of the easement area or the program, as determined by the NRCS, or

(ii) The termination action will address a compelling public need for which there is no practicable alternative even with avoidance and minimization, and will further the practical

administration and management of the easement area or the program, as determined by the NRCS.

(2) For modification or exchange actions—

(i) There is no reasonable alternative that would avoid the easement area, or if the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the original easement area and its conservation functions and values to the greatest extent practicable and any remaining adverse impacts must be mitigated, as determined by NRCS, at no cost to the government,

(ii) The action is consistent with the original intent of the easement and is consistent with the purposes of the program, and

(iii) The action results in equal or greater conservation functions and value and equal or greater economic value to the United States. A determination of equal or greater economic value to the United States will be made in accordance with an approved easement valuation methodology for agricultural land easements under subpart B or for wetland reserve easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

(3) For subordination actions, the action—

(i) Increases conservation functions and values or has a limited negative effect on conservation functions and values;

(ii) Is at no cost to the Government; and

(iii) Notwithstanding paragraph (a)(5) of this section, will only minimally affect the acreage subject to the interest in land.

(4) For termination actions, the action—

(i) Is in the interest of the Federal Government; and

(ii) The United States will be fully compensated for the fair market value of the interest in land including any costs and damages related to the termination.

(5) The easement administration action will not affect more than 10 percent of the original easement area unless NRCS determines that it is impracticable to achieve program purposes on the original easements area, in which case NRCS may authorize a greater percentage of the original easement area to be affected.

(6) The landowner and, if applicable, the agricultural land easement holder agrees to such easement administration action prior to NRCS considering that such easement administration action may be approved.

(b) Easement subordinations or modifications are preferred to easement exchanges that may involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.

(c) Replacement of easement acres as part of an easement exchange must occur within the same State and within the same eight-digit watershed as determined by the hydrologic unit codes developed by the U.S. Geological Survey.

(d) Where NRCS determines that recordation of an amended or new easement deed is necessary to affect an easement administration action under this section, NRCS may use the most recent version of the ACEP deed document or deed terms approved by NRCS. The amended or new easement deed must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation of documents.

(e) Modification or exchange of all or a portion of an interest in land enrolled in ACEP–ALE may not increase any payment to an easement holder.

(f)(1) A termination action must meet criteria identified in this part and are limited to those circumstances where NRCS determines it is in the Federal Government's interest to terminate all or a portion of the interest in the land enrolled in the program,

that the purposes of the program can no longer be achieved on the original easement area, or the terms of the easement are no longer enforceable and there are no acceptable replacement acres available.

(2) NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, legal filing fees, costs relating to the termination, and any damages determined appropriate by NRCS.

(3) At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(g) Insofar as is consistent with the easement and applicable law, NRCS may approve modifications to an easement plan that do not affect provisions of the easement. Easement plans include any conservation plan, WRPO, wetland reserve easement restoration agreements, grazing management plan, habitat management plans, or other plans required as a condition of enrollment. Any easement plan modification must meet this part and must result in equal or greater conservation benefits on the enrolled land.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

§ 1468.7 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to recording the easement in the applicable land records or executing the 30-year contract may void the availability of ACEP funding for that transaction, unless the new landowner is determined eligible, the transfer is approved by NRCS, and the new landowner is willing to comply with ACEP requirements.

(b) *Payments to participants.* For wetland reserve easements with annual installment payments, any remaining easement payments will be made to the original participants unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS will bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1468.8 Payments not subject to claims.

Any cost-share, contract, agreement, or easement payment or portion, thereof, due any person, legal entity, Indian Tribe, eligible entity, or other party under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States.

§ 1468.9 Assignments.

Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1468.10 Environmental markets.

(a) *Ecosystem services credits for conservation improvements under a wetland reserve easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the rights or interests granted under the easement to the United States.

(b) *Ecosystem services credits related to an agricultural land easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to

the grantee or to the United States right of enforcement.

(c) *Voluntary action.* ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

Subpart B—Agricultural Land Easements

§ 1468.20 Program requirements.

(a) *General.* (1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is—

(i) Subject to a written pending offer; or

(ii) Owned or in the process of being purchased by the eligible entity as part of an approved buy-protect-sell transaction.

(2) To participate in ACEP–ALE, eligible entities as identified in (b) below must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities must enter into an ALE-agreement with NRCS and address the ACEP–ALE deed requirements specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses.

(3) Under the ALE-agreement, unless otherwise specified in this part, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement and the eligible entity will provide a share that is at least equivalent to the Federal share.

(4) The duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration allowed by State law.

(b) *Entity eligibility.* (1) To be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in §1468.3. In addition, eligible entities interested in receiving ACEP–ALE funds must provide NRCS sufficient evidence of—

(i) A commitment to long-term conservation of agricultural lands,

(ii) A demonstrated capability to acquire, manage, and enforce easements,

(iii) Sufficient number of staff dedicated to monitoring and easement stewardship,

(iv) The estimated easement and related costs and the anticipated sources of funding sufficient to meet the non-Federal share requirements for each parcel as described in §1468.24, and

(v) For individual parcels on which the eligible entity's own cash resources will comprise less than 10 percent of the fair market value of the agricultural land easement for payment of easement compensation to the landowner, the eligible entity must provide NRCS specific evidence of funding available to manage, monitor, and enforce the easement.

(2) All eligible entities identified on an application or ALE-agreement must—

(i) Ensure that their records and the records of all landowners of parcels identified on an application have been established in the USDA customer records system and that USDA has all the documentation needed to establish these records, and

(ii) Eligible entities must also comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170, and maintain such registration for the duration of the ALE-agreement.

(c) *Landowner eligibility.* Under ACEP–ALE, all parcel landowners, including an eligible entity owner of private or Tribal land in an approved buy-protect-sell transaction, must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12,

(2) Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions of 7 CFR part 1400;

(3) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and

(4) Have their records established in the USDA customer records system.

(d) *Land eligibility*. (1) Land will only be considered eligible for enrollment in ACEP–ALE based on NRCS determination that such private or Tribal agricultural land, including land on a farm or ranch that—

(i) Is subject to a written pending offer by an eligible entity or part of an approved buy-protect-sell transaction;

(ii)(A) Contains at least 50 percent prime or unique farmland, or designated farm and ranch land of State or local importance unless otherwise determined by NRCS,

(B) Contains historical or archaeological resources,

(C) The enrollment of which would protect grazing uses and related conservation values by restoring or conserving land, or

(D) Furthers a State or local policy consistent with the purposes of the ACEP–ALE;

(iii) Is—

(A) Cropland;

(B) Rangeland;

(C) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;

(D) Located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;

(E) Pastureland; or

(F) Nonindustrial private forest land that contributes to the economic viability of a parcel offered for enrollment or serves as a buffer to protect such land from development; and

(iv) Possesses suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program.

(2) If land offered for enrollment is determined eligible under paragraph (d)(1) of this section, then NRCS may also enroll land that is incidental to the eligible land if the incidental land is determined by NRCS to be necessary for the efficient administration of an agricultural land easement.

(3) Eligible land, including eligible incidental land, may not include nonindustrial private forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel.

(e) *Ineligible land*. The land specified in paragraphs (e)(1) through (7) of this section is not eligible for enrollment in ACEP–ALE:

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes;

(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government;

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land unless the eligible land is owned on a transitional basis as part of an approved buy-protect-sell transaction;

(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the program;

(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses;

(6) Land which NRCS determines to have unacceptable exceptions to clear title or insufficient legal access; or

(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP–ALE unless it is determined by NRCS that the third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement, that any methods of exploration and extraction will have only a limited and localized impact on the easement, and the limitations are specified in the ALE deed.

(f) *Buy-Protect-Sell transaction land eligibility*. (1) NRCS may enter into a

buy-protect sell transaction with an eligible entity on a parcel that—

(i) Otherwise meets the eligibility criteria described in this section,

(ii) Is subject to conditions, as determined by NRCS, that necessitate the ownership of the parcel by the eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as imminent threat of development, including, but not limited to, planned or approved conversion of grasslands to more intensive agricultural uses, and

(iii) Is owned by or is in the process of being purchased by the eligible entity.

(2) At the time of application, the eligible entity must provide NRCS evidence of ownership or active purchase of the parcel, such as a valid purchase agreement.

(3) The eligible entity must meet all program requirements and any specific provisions related to buy-protect-sell transactions as specified in this part.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

§ 1468.21 Application procedures.

(a) To apply for enrollment an eligible entity must submit an entity application for an ALE-agreement and any associated individual parcel applications to NRCS. For buy-protect-sell transactions, additional information may be required at the time of application as identified by NRCS.

(b) NRCS may conduct initial eligibility determinations for the fiscal year an application is submitted. As determined by NRCS, the entity eligibility requirements must be met for the fiscal year in which the ALE-agreement is executed, and the land and landowner must be eligible for the fiscal year the parcel is approved for funding through an ALE-agreement. NRCS eligibility determinations are based on the application materials provided by the eligible entity, onsite assessments, and the criteria in § 1468.20.

§ 1468.22 Establishing priorities, ranking considerations, and project selection.

(a) NRCS will use national and State criteria to rank and select eligible parcels for funding. The national ranking criteria will comprise at least half of the ranking score. The State criteria will be developed by NRCS on a State-by-State basis, with input from the State technical committee. The weighting of ranking criteria, including adjustments to account for geographic differences, will be developed to maximize the benefit of the Federal investment under the program. Parcels are ranked and selected for funding at the State level.

(b) The national ranking criteria are—

(1) Percent of prime, unique, and other important farmland soils in the parcel to be protected;

(2) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Existence of a farm or ranch succession plan or similar plan established to address agricultural viability for future generations;

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use or protects grazing uses and related conservation values;

(9) Proximity of the parcel to other agricultural operations and agricultural infrastructure;

(10) Maximizing the protection of contiguous or proximal acres devoted to agricultural use;

(11) Whether the land is currently enrolled in CRP in a contract that is set to expire within 1 year and is grassland that would benefit from protection under a long-term easement or is land under a CRP contract that is in transition to a covered farmer or rancher pursuant to 16 U.S.C. 3835(f);

(12) Decrease in the percentage of acreage of permanent grassland, pasture, and rangeland, other than cropland and woodland pasture, in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(13) Percent of the fair market value of the agricultural land easement that is the eligible entity's own cash resources for payment of easement compensation to the landowner and comes from sources other than the landowner; and

(14) Other criteria as determined by NRCS.

(c) State or local criteria as determined by NRCS, with advice of the State technical committee, may only include—

(1) The location of a parcel in an area zoned for agricultural use;

(2) The eligible entity's performance in managing and enforcing easements. Performance must be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored annually and the percentage of monitoring results that have been reported annually;

(3) Multifunctional benefits of farm and ranch land protection including—

(i) Social, economic, historic, and archaeological benefits;

(ii) Enhancing carbon sequestration;

(iii) Improving climate change resiliency;

(iv) At-risk species protection;

(v) Reducing nutrient runoff and improving water quality;

(vi) Other related conservation benefits.

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional agricultural or conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected or improved;

(6) Score in the land evaluation and site assessment system as identified in 7 CFR part 658 or equivalent measure for grassland enrollments, to serve as a measure of agricultural viability (access to markets and infrastructure);

(7) Measures that will be used to maintain or increase agricultural viability, such as succession plans, agricultural land easement plans, or entity deed terms that specifically address long-term agricultural viability; and

(8) Other criteria determined by NRCS that will account for geographic differences provided such criteria allow for the selection of parcels that will achieve ACEP–ALE purposes and continue to maximize the benefit of the Federal investment under the program.

(d) If NRCS determines that the purchase of two or more agricultural land easements are comparable in achieving program goals, NRCS will not assign a higher priority to any one of these agricultural land easements solely on the basis of lesser cost to the program.

(e) NRCS will rank all eligible parcels that have been submitted prior to an application cut-off date in accordance with the national and State ranking criteria before selecting parcels for funding.

(f) Eligible parcels selected for funding by NRCS will be identified in an agreement executed by NRCS and an eligible entity, either as part of the ALE-agreement or through a supplemental arrangement as agreed to by the parties.

(g) Pursuant to the terms of the ALE-agreement, eligible parcels may be selected for funding in a fiscal year subsequent to the fiscal year in which the parties entered into an ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

§ 1468.23 ALE-agreements.

(a) NRCS will enter into an ALE-agreement with a selected eligible entity that stipulates the terms and conditions under which the eligible entity is permitted to use ACEP–ALE funding

and will incorporate all ACEP–ALE requirements. NRCS will make available to eligible entities the ALE-agreement terms and conditions, including any applicable templates, based on enrollment type. The ALE-agreement will address—

(1) The interests in land to be acquired, including the United States' right of enforcement, the deed requirements specified in this part, as well as the other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with ACEP–ALE funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on easements acquired with ACEP–ALE funds;

(5) The requirement for any conservation plan for highly erodible cropland or agricultural land easement plans to be developed as required or agreed-to prior to execution of the easement deed and payment of easement compensation to the landowner;

(6) As applicable, the allowance of eligible parcel substitution upon mutual agreement of the parties;

(7) The certification by the landowner at the time of easement execution and payment of easement compensation of the extent of any charitable contribution or other donation the landowner has provided to the eligible entity;

(8) The submission of documentation of procured costs for each parcel, including appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, and closing cost if such procured costs are to be considered as part of the eligible entity's non-Federal share; and

(9) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(10) For buy-protect-sell transactions, the ALE-agreement will also include the requirements identified in §1468.27.

(b) The term of standard ALE-agreements, except as described in §1468.27 for ALE-agreements for approved buy-protect-sell transactions, will be:

(1) A minimum of 5 fiscal years and not to exceed 7 fiscal years following the fiscal year the agreement is signed for certified entities; and

(2) At least 3 fiscal years and not to exceed 5 fiscal years following the fiscal year the agreement is signed for other eligible entities.

(c) Eligible parcels selected for funding by NRCS will be identified on an attachment to the ALE-agreement. The attachment will include landowners' names, acreage of the easement area, the estimated fair market value, the estimated Federal contribution, and other relevant information.

(d) The ALE-agreement will require the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

(e) With NRCS approval, the eligible entity may substitute acres within a pending easement offer. Substituted acres must not reduce the easements capability in meeting program purposes.

(f) With NRCS approval, an eligible entity may substitute pending easement offers within a standard ALE-agreement. The substituted landowner and easement offer must meet eligibility criteria as described in §1468.20. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within an ALE-agreement. Substitutions are not authorized under ALE-agreements for buy-protect-sell transactions.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

§1468.24 Compensation and funding for agricultural land easements.

(a) *Determining the fair market value of the agricultural land easement.* (1) The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement, as determined using—

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions,

(ii) An areawide market analysis or survey, or

(iii) Another industry-approved method approved by NRCS.

(2) Prior to receiving funds for an agricultural land easement, the eligible entity must provide NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets the requirements of this part.

(3) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions as selected by the eligible entity.

(4) If the fair market value of the easement is determined using an areawide market analysis or survey, the areawide market analysis or survey must be completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis or survey. The use of areawide market analysis or survey must be approved by NRCS prior to entering into an ALE-agreement.

(5) Requests to use another industry-approved method must be submitted to NRCS and approved by NRCS prior to entering into the ALE-agreement. NRCS will identify the applicable industry standards and any associated NRCS specifications based on the methodology approved.

(6) NRCS will review for quality assurance purposes, appraisals, areawide market analysis or surveys, valuation reports, or other information resulting from another industry-approved method approved for use by NRCS.

(7) Eligible entities must provide a copy of the applicable report or other information used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date.

(8) Prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner, NRCS must approve the determination of the fair market value of the agricultural land easement upon which the Federal share will be based.

(b) *Determining the Federal share of the agricultural land easement.* (1) Subject to the statutory limits, NRCS may provide up to 50 percent of the fair market value of the agricultural land easement. An eligible entity will provide a non-Federal share that is at least equivalent to the Federal share.

(2) The non-Federal share provided by an eligible entity may be comprised of—

(i) The eligible entity's own cash resources for payment of easement compensation to the landowner or for a buy-protect-sell transaction, the amount of the fair market value of the agricultural land easement, less the amount of the Federal share, that is provided through the conveyance of the agricultural land easement by the eligible entity;

(ii) A charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner;

(iii) Where the amounts as identified in paragraphs (b)(2)(i) and (ii) of this section are not sufficient to meet the non-Federal share amount, the eligible entity may also include the procured costs paid by the eligible entity to a third-party for an appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, baseline reports, mineral assessments, or closing cost; and

(iv) Where the amounts as identified in paragraphs (b)(2)(i) through (iii) of this section are not sufficient to meet the non-Federal share amount, the eligible entity may also include up to 2 percent of the fair market value of the agricultural land easement for easement stewardship and monitoring costs provided by the eligible entity.

(3) NRCS may authorize a waiver to increase the Federal share of the cost of an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if—

(i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part,

(ii) An eligible entity provides a non-Federal share that is at least equivalent to the Federal share or comprises the remainder of the fair market value of the agricultural land easement, whichever is less, and

(iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grassland of special environmental significance attributes are protected.

(c) *Uses of NRCS ACEP–ALE funds.* (1) ACEP–ALE funds may not be provided or used for eligible entity expenditures for expenses, such as: Appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, phase I environmental site assessments, closing services, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(2) NRCS will conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and hazardous materials reviews.

(3) NRCS may provide technical assistance for the development of a conservation plan on those portions of a parcel that contain highly erodible cropland, or if requested, to assist in compliance with the terms and conditions of easements.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

§ 1468.25 Agricultural land easement deeds.

(a) Under ACEP–ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ALE-agreement. The easement deed will require that the easement area be maintained in accordance with ACEP–ALE goals and objectives for the term of the easement.

(b) The term of an agricultural land easement must be in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must provide for the effective administration, management, and enforcement of the agricultural land easement by the eligible entity or its successors and assigns and must address the deed requirements as specified by this part and by NRCS in the ALE-agreement.

(d) All deeds, as further specified in the ALE-agreement, must address the following regulatory deed requirements:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement:

(i) May be used only if the terms and conditions of the easement are not enforced by the eligible entity;

(ii) Extends to a right of inspection only if the holder of the easement fails to provide monitoring reports in a timely manner or NRCS has a reasonable and articulable belief that the terms and conditions of the easement have been violated;

(iii) Remains in effect for the duration of the easement and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Specify that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2-percent impervious surface limitation at the time an individual parcel is approved for funding,

(ii) NRCS may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces,

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size;

and the purposes for which the easement is being acquired,

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP–ALE easements must include language limiting the extent of impervious surfaces within the easement area.

(3) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP–ALE.

(4) Include clauses requiring that any changes to the easement deed or easement area made after easement recordation, including any amendment to the easement deed, any subordination of the terms of the easement, or any modifications, exchanges, or terminations of some or all of the easement area, must be consistent with the purposes of the agricultural land easement and this part and must be approved by NRCS and the easement holder in accordance with §1468.6 prior to recordation or else the action is null and void.

(5) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(6) Limit the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(7) Prohibit subsurface mineral development unless the terms of the deed, as determined by NRCS, specify that any subsurface mineral development allowed by the eligible entity on the easement area must—

(i) Be conducted in accordance with applicable State law;

(ii) Have a limited and localized impact;

(iii) Not harm the agricultural use and conservation values of the land subject to the easement;

(iv) Not materially alter or affect the existing topography;

(v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the agricultural use or conservation values of the land subject to the easement and is approved by NRCS prior to the initiation of mineral development activity;

(vi) Not be accomplished by any surface mining method;

(vii) Be within the impervious surface limits of the easement under paragraph (d)(2) of this section;

(viii) Use practices and technologies that minimize the duration and intensity of impacts to the agricultural use and conservation values of the land subject to the easement; and

(ix) Ensure that each area impacted by the subsurface mineral development are reclaimed and restored by the holder of the mineral rights at cessation of operation.

(8) Include specific protections related to the purposes for which the agricultural land easement is being acquired, including provisions to protect historical or archaeological resources or grasslands of special environmental significance.

(9) For parcels with highly erodible cropland, include terms that ensure compliance with the conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations.

(10) Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding by NRCS, such as the purchase of the agricultural land easement, the development and maintenance of an agricultural land easement plan, or use of the minimum deed terms as described in paragraph (f) of this section.

(11) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the agricultural land easement under ownership of a farmer or rancher.

(12) Include other minimum deed terms specified by NRCS to ensure that ACEP–ALE purposes are met.

(e) NRCS reserves the right to require additional specific language or require removal of language in the agricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that satisfactorily address the deed requirements in paragraph (d) of this section and may be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. The standard minimum deed terms addendum will specify the terms that will prevail in the event of a conflict.

(2) If an eligible entity agrees to use the standard set of minimum deed terms as published by NRCS, NRCS and the eligible entity will identify in the ALE-agreement the use of the standard minimum deed terms as a requirement and National Office review of individual deeds may not be required. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms as published.

(3) The eligible entity must submit all individual agricultural land easement deeds to NRCS at least 90 days before the planned easement closing date and be approved by NRCS in advance of use.

(4) Eligible entities with multiple eligible parcels may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(5) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by the National Office and that the appropriate site-specific information has been included.

(g) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with appropriately qualified governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management, and enforcement responsibilities.

(h) All agricultural land easement deeds acquired with ACEP–ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

§ 1468.26 Eligible entity certification.

(a) To be considered for certification, an entity must submit a written request for certification to NRCS, which specifically addresses the items in paragraphs (a)(1) through (7) of this section:

(1) An explanation of how the entity meets the requirements identified in § 1468.20(b) of this section;

(2) An agreement to use for ACEP–ALE funded acquisitions easement valuation methodologies identified in section § 1468.24 of this part;

(3) A showing of a demonstrated record of completing acquisition of easements in a timely fashion;

(4) A showing that it has the capacity to monitor and enforce the provisions of easement deeds and history of such monitoring and enforcement;

(5) A plan for administering easements enrolled under this part, as determined by NRCS;

(6) Proof that the eligible entity—

(i) Has been accredited by the Land Trust Accreditation Commission and has acquired not fewer than 10 agricultural land easements under ACEP–ALE, the Farm and Ranch Lands Protection Program, or the Farmland Protection Program;

(ii) Is a State department of agriculture or other State agency with statutory authority for farm and ranchland protection and has acquired not fewer than 10 agricultural land

easements under ACEP–ALE or its predecessor programs; or

(iii) Holds, manages, and monitors a minimum of 25 agricultural land conservation easements, of which a minimum of 10 of these easements are agricultural land easements under ACEP–ALE or its predecessor programs, and if the eligible entity is a nongovernmental organization, provides evidence that the eligible entity possesses a dedicated fund for the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(7) Successfully met the responsibilities of the eligible entity under the applicable agreements with NRCS, as determined by NRCS, relating to agricultural land easements that the eligible entity has acquired under the program or any predecessor program;

(b) NRCS will notify an eligible entity in writing whether they have been certified and the rationale for the agency's decision. When NRCS determines an eligible entity qualifies as certified—

(1) NRCS may enter into an ALE-agreement with the certified entity that is for a period of a minimum of 5 fiscal years and not to exceed 7 fiscal years following the fiscal year the agreement is executed. NRCS will review and select parcel applications submitted for funding by certified entities as specified in §1468.22. Funding for selected parcels is identified on an attachment to the ALE-agreement.

(2) The terms of the ALE-agreement will include the regulatory deed requirements specified in §1468.25 of this part that must be addressed in the deed to ensure that ACEP–ALE purposes will be met without requiring NRCS to pre-approve each easement transaction prior to closing.

(i) Certified entities may purchase easements without NRCS approving the agricultural land easement deeds, baseline reports, titles, or appraisals before the purchase of the easement;

(ii) Certified entities will prepare the agricultural land easement deeds, baseline reports, titles, and appraisals in accordance with NRCS requirements as identified in the ALE-agreement;

(3) NRCS will conduct quality assurance reviews of a percentage of the closed agricultural land easement transactions and annual monitoring reports submitted by the certified entity; and

(4) NRCS will provide the certified entity an opportunity to correct errors or remedy deficiencies identified in the NRCS quality assurance review. If the certified entity fails to remedy the identified items to NRCS's satisfaction, NRCS will consider whether to allow the certified entity to continue to purchase ALE-funded easements without prior NRCS approval, to decertify the entity in accordance with paragraph (c) of this section, or, require the certified entity to take administrative steps necessary to remedy the deficiencies.

(c)(1) NRCS will conduct a quality assurance review of the certified entity a minimum of once every 3 fiscal years to ensure that the certified entities are meeting the certification criteria established in this section.

(2) If NRCS determines that the certified entity no longer meets these criteria, the Chief will—

(i) Provide the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If NRCS determines the certified entity does not meet the criteria established in this part after the 180 days, NRCS will send written notice of decertification. This notice will specify the actions that have not been completed to retain certification status, the actions the entity must take to regain certification status, the status of funds in the ALE-agreement; and the eligibility of the entity to apply for future ACEP–ALE funds. The entity may contest the notice of decertification in writing to NRCS within 20 calendar days of receipt of the notice of decertification. The entity's letter must provide specific reasons why the decision to decertify is in error.

(3) The period of decertification may be up to 3 years, based upon the circumstances associated with the action.

(4) The entity may submit a new request for certification to NRCS only

after the decertification period has expired.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

§ 1468.27 Buy-Protect-Sell transactions.

(a) NRCS may enter into an ALE-agreement with an eligible entity for a buy-protect-sell transaction to provide cost-share assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that an eligible entity owns or is in the process of purchasing for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer to a qualified farmer or rancher.

(b) At the time the individual parcel application is submitted, the eligible entity must identify the specific buy-protect-sell transaction type as either—

(1) Pre-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share, or

(2) Post-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS based on documentation of extenuating circumstances provided by the eligible entity.

(c) The ALE-agreement must contain the information described in § 1468.23 and must specify the details of the legal arrangement for the individual buy-protect-sell transaction, including that for all buy-protect-sell transactions the eligible entity must—

(1) Own the land or within 12 months of execution of the ALE-agreement for the buy-protect-sell transaction by both NRCS and the eligible entity, and the eligible entity has completed the purchase of the land or has demonstrated to the satisfaction of NRCS that completion of the purchase of the land is imminent.

(2) Make an initial sale of the land to a farmer or rancher that is or will be subject to the agricultural land easement pursuant to the terms of the ALE-agreement.

(3) Sell the land to the farmer or rancher for a purchase price that does not exceed the lesser of—

(i) The original purchase price of the land paid by the eligible entity; or

(ii) The agricultural value of the land as determined by an appraisal.

(4) Ensure that amounts included in the sale of the land to the farmer or rancher for reasonable holding and transaction costs incurred by the eligible entity in total do not exceed more than 10 percent of the agricultural value of the land.

(5) Submit documentation satisfactory to NRCS that confirms the sale of the land that is or will be subject to the agricultural land easement meets the buy-protect-sell transaction requirements. Pursuant to the terms and conditions of the ALE-agreement for the buy-protect-sell transaction, the eligible entity must provide—

(i) Evidence that the purchaser of the land is a qualified farmer or rancher,

(ii) Documentation of the purchase price for the land paid by the eligible entity,

(iii) The appraisal used to determine the agricultural value of the land,

(iv) An itemized list of the allowable holding or transaction costs included in the sales price,

(v) A copy of the settlement statements identifying the sale price and all holding and transactions costs charged to the farmer or rancher purchaser, and

(vi) Other documents as specified by NRCS in the ALE-agreement.

(6) Reimburse NRCS for the entirety of the Federal share provided if, as determined by NRCS, the eligible entity failed to transfer ownership per the terms and conditions of the ALE-agreement for the buy-protect-sell transaction.

(d) In addition to the requirements identified in paragraph (c) of this section, for buy-protect-sell transactions that involve a pre-closing transfer as required by paragraph (b)(1) of this section:

(1) The maximum duration of the ALE-agreement may be the same as described in § 1468.23(b).

(2) The Federal share for the agricultural land easement will be provided on a reimbursable basis only, after the agricultural land easement has closed and the required documents have been provided to and reviewed by NRCS.

(e) For buy-protect-sell transactions that involve a post-closing transfer as required by paragraph (b)(2) of this section:

(1) At the time of application, in addition to the information identified § 1468.21, the eligible entity must provide NRCS specific information on the proposed structure of the buy-protect-sell transaction, including the parties to be involved in the transaction, the roles and responsibilities of each party related to the acquisition, holding, monitoring, and enforcement of the easement and the fee title ownership of the land, relevant State law that authorizes such transactions, proposed timeline, and other information identified by NRCS.

(2) NRCS will determine the legal conformance of the proposed arrangement for the buy-protect-sell transaction.

(3) Based on the NRCS determination of legal conformance of the proposed buy-protect-sell transaction, for eligible applications selected for funding based on ranking and availability of funds, NRCS will identify the specific terms of the ALE-agreement for the buy-protect-sell transaction.

(4) The buy-protect-sell transaction must meet the timing requirements in paragraphs (e)(4)(i) through (iv) of this section—

(i) The term of the ALE-agreement for a buy-protect-sell transaction will be for a period no longer than 5 fiscal years following the fiscal year of execution of the ALE-agreement by NRCS and the eligible entity.

(ii) The agricultural land easement must be closed within 2 fiscal years following the fiscal year of ALE-agreement execution, and the sale of the land subject to the agricultural land easement to a qualified farmer or rancher must occur within 3 years of closing on the agricultural land easement.

(iii) The Federal share for the agricultural land easement will be provided on a reimbursable basis only, after the agricultural land easement has closed and the required documents have been provided to and reviewed by NRCS.

(iv) Prior to the expiration of the 3-year timeframe, the eligible entity may submit to NRCS a request for an extension that includes documentation of extenuating circumstances and the anticipated timeline, not to exceed 12 months, in which the sale of the land subject to the easement will occur.

(v) NRCS may, in its discretion, authorize such additional time for the sale of the land subject to the agricultural land easement to a qualified farmer or rancher through a modification to the ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

§ 1468.28 Violations and remedies.

(a) In the event of a violation of the agricultural land easement terms, the agricultural land easement holder will notify the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(b) In the event that the agricultural land easement holder, or its successors or assigns, fails to enforce any of the terms of the agricultural land easement as determined by NRCS, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS reserves the right to enter upon and inspect the easement area if the annual monitoring report provided by the agricultural land easement holder documenting compliance with the agricultural land easement is insufficient or is not provided annually, the United States has a reasonable and articulable belief that the terms and conditions of the easement have been violated, or to remedy deficiencies or easement violations as it

relates to the conservation plan in accordance with 7 CFR part 12. Prior to its inspection, NRCS will notify the agricultural land easement holder and the landowner and provide a reasonable opportunity for the agricultural land easement holder and the landowner to participate in the inspection.

(d) In the event of an emergency, the entry onto the easement area may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation with notification to the landowner and the agricultural land easement holder provided at the earliest practicable time. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(e) The United States will be entitled to recover any and all costs from the eligible entity, or its successors or assigns, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the agricultural land easement.

(f) In instances where an easement is terminated in whole or in part, the proponent of the termination action must pay to CCC an amount determined by NRCS.

(g) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the agricultural land easement holder at their last-known address. The notice will set forth the nature of the noncompliance by the agricultural land easement holder, or its successors or assigns, and provide a 180-day period to cure. If the agricultural land easement holder fails to cure within the 180-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

Subpart C—Wetland Reserve Easements

§ 1468.30 Program requirements.

(a) *General.* (1) Under the ACEP–WRE, NRCS may purchase wetland reserve easements from eligible landowners who voluntarily cooperate to restore, protect, and enhance wetlands on eligible private or Tribal lands. A 30-year contract enrollment option is also available for acreage owned by Indian Tribes.

(2) To participate in ACEP–WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, manage, and monitor the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

(3) NRCS may provide financial assistance through an easement restoration agreement for the conservation practices and eligible activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values and associated habitats.

(4) For ACEP–WRE enrollments, NRCS may implement such conservation practices and eligible activities through an agreement with the landowner, a contract with a vendor, an interagency agreement, or a cooperative agreement. The specific restoration, protection, enhancement, maintenance, and management actions authorized by NRCS, may be undertaken by the landowner, NRCS, or its designee.

(5) The duration of a wetland reserve easement may be either perpetual, 30-years, or the maximum duration allowed by State law. The duration of a 30-year contract on acreage owned by Indian Tribes is 30 years.

(b) *Acreage limitations.* (1) No more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in CRP and ACEP–WRE, and no more than 15 percent of the total cropland in the county may be subject to an easement under ACEP–WRE.

(2) The limitations in paragraph (b)(1) of this section do not apply to areas devoted to windbreaks or

shelterbelts after November 28, 1990, or to cropland designated by NRCS with ''subclass w'' in the land capability classes IV through VIII because of severe use limitations due to factors related to excess water such as poor soil drainage, wetness, high water table, soil saturation, or inundation.

(3) NRCS and the FSA will concur before a waiver of the 25-percent limit of paragraph (b)(1) of this section can be approved for an easement proposed for enrollment in ACEP–WRE. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility*. To be eligible to enroll in the ACEP–WRE, all landowners must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at 7 CFR part 1400 and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Provide any documentation required by NRCS as necessary to determine eligibility; and

(3) For easement applications, have been the landowner of such land for the 24-month period prior to the time of application unless it is determined by NRCS that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner or pursuant to the terms of an existing trust,

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program. Adequate assurances will include documentation that the change of ownership resulted from circumstances such as:

(A) The prior landowner owned the land for 2 years or more and transferred ownership amongst members of the immediate family (father, mother, spouse, children, grandparents, or grandchildren),

(B) A completion of a contract for deed entered into 24 months or more prior to the application date,

(C) The new landowner had leased the land for agricultural purposes for 24 months or more prior to the application date, or

(D) The easement area is a portion of a larger property where the majority portion was acquired for agriculture purposes.

(4) Agree to provide such information to NRCS as the agency deems necessary to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *New landowner*. When a parcel of land that has been accepted for enrollment into the ACEP–WRE is sold or transferred prior to NRCS purchase of the easement, NRCS will cancel the application or agreement to purchase and remove the acres from enrollment unless the new landowner meets the requirements of paragraph (c) of this section and accepts the terms and conditions of enrollment. The new landowner must submit required documentation for NRCS review and execute any required agreements or contracts. The decision to approve and execute an enrollment transferred prior to closing is at NRCS's discretion.

(e) *Land eligibility*. (1) Only private land or acreage owned by an Indian Tribe may be considered for enrollment into ACEP–WRE.

(2) NRCS will determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of such land and resultant wetland functions and values merit inclusion of such land in the program when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, management, and monitoring.

(3) Land will only be considered eligible for enrollment in the ACEP–WRE if NRCS determines that the enrollment

of such land maximizes wildlife benefits and wetland function and values.

(4) To be determined eligible, NRCS must also determine that such land is—

(i) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands, if such land is identified by NRCS as:

(A) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and agricultural lands substantially altered by flooding so as to develop and retain wetland functions and values; or

(B) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored; or

(C) Farmed wetland and adjoining land enrolled in CRP that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; or

(D) A riparian area along a stream or other waterway that links, or after restoring the riparian area, will link wetlands protected by the ACEP–WRE easement, another easement, or other device or circumstance that achieves the same objectives as an ACEP–WRE easement.

(ii) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of—

(A) A closed basin lake, together with adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide a 50-percent share of the cost of the easement; or

(B) A pothole and adjacent land that is functionally dependent on it; and

(C) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(5) If land offered for enrollment is determined eligible under this section, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not meet the requirements of paragraph (e)(4)(i)(D) of this section, and restored wetlands, but not more than NRCS, in consultation with the State technical committee, determines is necessary to maximize wildlife benefits and contribute significantly to wetland functions and values. NRCS will not enroll as eligible adjacent or contiguous land any constructed wetlands that treat wastewater or contaminated runoff.

(6) To be enrolled in the program, eligible land must have sufficient access and be configured in a size and with boundaries that allow for the efficient management and monitoring of the area for program purposes and otherwise promote and enhance program objectives as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in ACEP–WRE only if the land and landowner meet the requirements of this part and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in ACEP–WRE, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The land specified in paragraphs (g)(1) through (7) of this section is not eligible for enrollment in the ACEP–WRE:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land established to trees under the CRP, except in cases where the land meets all other WRE eligibility criteria, the established cover conforms to WRE restoration requirements and NRCS specifications, an active CRP contract will be terminated or otherwise modified upon purchase of the WRE easement, and any additional

criteria NRCS uses to determine if enrollment of such lands would further the purposes of the program;

(3) Lands owned by the United States other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP–WRE;

(6) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, including, but not limited to—

(i) Risk of hazardous materials or petroleum products either onsite or offsite;

(ii) Permitted or existing rights of way, either onsite or offsite, for infrastructure development;

(iii) Adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored; or

(7) Land which NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

§ 1468.31 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an application to NRCS.

(b) *Preliminary agency action.* By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values and for other activities, such as the ranking and development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in costs.* In order to enhance the probability of enrollment in ACEP–WRE, the landowner or someone other than the landowner may offer to contribute financially to the cost of the acquisition or restoration of the wetland reserve easement to leverage Federal funds. This offer must be made in writing to NRCS.

§ 1468.32 Establishing priorities, ranking consideration, and project selection.

(a) When evaluating easements or 30-year contract applications from landowners, NRCS, with advice from the State technical committee, may consider:

(1) The conservation benefits of obtaining an easement or other interest in the land, including but not limited to—

(i) Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed;

(ii) Extent and use of habitat that will be restored for threatened, endangered, or other at-risk species or number of different at-risk species benefitted;

(iii) Protection or restoration of native vegetative communities;

(iv) Habitat diversity and complexity to be restored;

(v) Proximity and connectivity to other protected habitats;

(vi) Extent of beneficial adjacent land uses;

(vii) Proximity to impaired water bodies;

(viii) Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types;

(ix) Capacity of the wetland to improve water quality;

(x) Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits.

(2) The cost effectiveness of each easement;

(3) Whether the landowner or another person or entity is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of this part would be achieved on the land;

(5) The productivity of the land;

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities;

(7) Such other factors as NRCS determines are necessary to carry out the purposes of the program.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS will give priority to—

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wetland-dependent wildlife or improving water quality, in coordination with FWS at the local level, as may be appropriate.

(c) NRCS, in consultation with the State technical committee, may place higher priority on—

(1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; and

(2) Land that is currently enrolled in CRP in a contract that is set to expire within 1 year from the date of application or land under a CRP contract that is in transition to a covered farmer or rancher pursuant to 16 U.S.C. 3835(f), and such land and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP.

(d) Notwithstanding any limitation of this part regarding priority ranking, NRCS may enroll eligible lands at any time to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. NRCS may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

§ 1468.33 Enrollment process.

(a) *Tentative selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in ACEP–WRE, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS's intent to continue the enrollment process on their land.

(c) *Acceptance and effect of offer of enrollment*—(1) *Wetland reserve easement.* For applications requesting enrollment through a wetland reserve easement, NRCS will present an agreement to purchase to the landowner which will describe the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The easement compensation amount will be based upon the lowest of the fair market value of the land, the geographic area rate cap, or the landowner offer, as provided in § 1468.34 of this part. The landowner accepts enrollment in the ACEP–WRE by signing the agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *30-year contract.* For applications requesting enrollment of acreage owned by an Indian Tribe through the 30-year contract option, NRCS will present an agreement to enter 30-year contract to the Tribal landowner which will describe the contract area, the contract compensation amount, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The Tribal landowner accepts enrollment in the ACEP–WRE by signing the agreement to enter 30-year contract. NRCS will proceed with implementation of the WRPO after the 30-year contract has been executed.

(d) *Restoration responsibility and the scope of enrollment.* (1) The agreement to purchase or agreement to enter 30-year contract is the enrollment document that establishes the terms of enrollment consistent with the terms and conditions of this part and identifies the—

(i) Scope of the agreement between NRCS and the landowner,

(ii) Basis for NRCS to obligate funds,

(iii) Nature and method through which NRCS will provide ACEP–WRE technical and financial assistance to the landowner, and

(iv) Withholding of the landowner's share of the restoration cost from the easement payment for applicable 30-year or nonpermanent easement or 30-year contract enrollments.

(2) The agreement to purchase between NRCS and the landowner under the easement option also constitutes the agreement for—

(i) Granting an easement on the enrolled land and sufficient access to the enrolled land as set forth under § 1468.37,

(ii) Implementing a WRPO which provides for the restoration, protection, and management of the wetland functions and values,

(iii) Recording the easement in accordance with applicable State law, and

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS and in accordance with Department of Justice Title Standards.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake on its own or through an agreement with the landowner or other third party, any activities to restore, protect, enhance, manage, maintain, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment.* Prior to execution of the easement deed or 30-year contract by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, insufficient access, sale of the land, risk of contamination from hazardous materials or petroleum products, or other reasons.

(f) *Landowner failure to accept enrollment offer in timely manner.* The offer of enrollment to the landowner will be void if not executed by the landowner within the time specified.

§ 1468.34 Compensation for easements and 30-year contracts.

(a) *Determination of easement compensation values.* (1) Compensation for an easement or 30-year contract under this part will be made in cash in such amount as is agreed to and specified in the agreement to purchase or agreement to enter 30-year contract and finalized in the warranty easement deed or 30-year contract.

(2) Payments for 30-year easements, nonpermanent easements as limited by State law, or 30-year contracts will be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS will pay as compensation the lowest of the values from paragraphs (a)(3)(i) through (iii) of this section:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices or based on an area-wide market analysis or survey,

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section, or

(iii) A written offer made by the landowner.

(4) Each fiscal year NRCS, in consultation with the State technical committee, will establish one or more geographic area rate caps within a State. NRCS will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include soil types, types of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement

payment may be less than the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2)(i) For easements or 30-year contracts valued at $500,000 or less, NRCS will provide compensation in up to 10 annual payments, as requested by the participant, as specified in the agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than $500,000, NRCS may provide compensation in at least 5, but not more than 10 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the NRCS Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the agreement to purchase or 30-year contract, entered into between NRCS and the landowner.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse the landowner for fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as authorized and determined by NRCS.

(d) *Per-acre-basis-calculations.* If easement or 30-year contract compensation values are calculated on a per-acre basis, NRCS will identify an estimated amount in its agreement to purchase and the final easement or 30-year contract payment will be made based on final determination of value and acreage and specified in the warranty easement deed or 30-year contract.

§ 1468.35 Wetland Reserve Enhancement Partnerships.

(a) The purpose of the Wetland Reserve Enhancement Partnership (WREP) option is to target and leverage resources to address high priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, or Indian Tribes.

(b) NRCS will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. NRCS will prioritize proposals that address wetland restoration needs of national or regional importance, including special project or area-wide proposals.

(c) NRCS will make the information regarding WREP available to the public and potential partners.

(d) NRCS will evaluate proposals and make final funding selections based upon the priorities identified in the public notice of funding availability.

(e) NRCS will enter into WREP agreements with partners who have projects selected for funding.

§ 1468.36 WRPO payments.

(a) NRCS may provide financial assistance for implementing the WRPO on the enrolled land subject to an easement or 30-year contract. The amount and terms and conditions of the financial assistance will be subject to the restrictions in paragraphs (a)(1) and (2) of this section on the costs of establishing or installing conservation practices or eligible activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a 30-year or nonpermanent easement or 30-year contract, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs. The landowner's share of the WRPO implementation costs may be withheld from the easement or 30-year contract payment.

(b) Payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO.

(c) Payments may be made for repair or replacement of an eligible conservation practice or activity, if NRCS determines that the conservation practice or eligible activity is still needed and that the disrepair or failure of the original conservation practice or eligible activity was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private

organizations as long as the conservation practices or eligible activities funded are approved by NRCS and implemented in compliance with this part.

§ 1468.37 Easement and 30-year contract participation requirements.

(a) *Easement requirements.* (1) To enroll eligible land in ACEP–WRE through the permanent or 30-year easement option, a landowner will grant an easement to the United States. The easement will require that the easement area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement will grant to the United States:

(i) A sufficient right of legal access to the easement area,

(ii) The right to authorize compatible uses of the easement area, including but not limited to such activities as hunting and fishing, managed timber harvest, water management, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established,

(iii) All rights, title, and interest in the easement area except those rights specifically reserved in the deed, and

(iv) The right to restore, protect, enhance, maintain, manage, and monitor activities on the easement area.

(3) The landowner will convey title to the easement in a manner that is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for title exceptions deemed acceptable by NRCS.

(4) The participant will—

(i) Comply with the terms of the easement,

(ii) Comply with all terms and conditions of any related contract or agreement,

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area, as determined by FSA,

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the easement in accordance with the terms of the easement and related agreements, and

(v) Agree that each person or legal entity that is subject to the easement will be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll eligible land in ACEP–WRE through the 30-year contract option, a landowner will enter into a contract with NRCS. The contract will require that the enrolled area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of the 30-year contract, the contract will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the contract and with the terms of the WRPO. In addition, the 30-year contract will grant to NRCS:

(i) A sufficient right of legal access to the entire contract area for the duration of the contract,

(ii) The right to authorize compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, water management, or periodic haying or grazing if such use is consistent with the long-

term protection and enhancement of the wetland resources for which the contract was established, and

(iii) The right to restore, protect, enhance, maintain, manage, and monitor activities on the enrolled area.

(3) The landowner will—

(i) Comply with the terms of the contract,

(ii) Comply with all terms and conditions of any associated agreement,

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the enrolled area in accordance with the terms of the contract and related agreements, and

(iv) Agree that each person or legal entity that is subject to the contract will be jointly and severally responsible for compliance with the contract and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

(c) *Reservation of grazing rights.* (1) NRCS may include in the terms and conditions of an easement a provision under which the landowner reserves grazing rights if NRCS determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the wetland reserve easement or 30-year contract,

(ii) Is consistent with the historical natural uses of the land and long-term wetland restoration, protection, and enhancement goals for which the wetland reserve easement or 30-year contract was established,

(iii) Is subject to a recorded exhibit to the deed outlining grazing purposes and limitations, and

(iv) Complies with a WRPO developed by NRCS, which may include a grazing management plan component that is consistent with the WRPO and is reviewed and modified as necessary, at least every 5 years.

(2) Compensation for easements or 30-year contracts where the grazing rights are reserved under this section will be based on the method described in §1468.34, except such compensation will be reduced by an amount equal to the value of the reserved grazing rights, as determined by NRCS.

§1468.38 Development and revision of the WRPO and associated compatible use authorizations.

(a) The WRPO will be developed and updated as determined by NRCS in consultation with the State technical committee and consideration of available site-specific technical input from FWS at the local level and others as appropriate.

(b) The WRPO will specify the manner in which the enrolled land will be restored, protected, enhanced, maintained, managed, and monitored to accomplish the goals of the program. The WRPO, and any revisions thereto, will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and associated wildlife, water quality, and wetland functions and values.

(c) The WRPO will identify the conservation practices and eligible activities needed to restore the functions and values on the enrolled land. NRCS may review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved. Revisions to the WRPO may result in the addition of conservation practices or eligible activities needed to enhance, maintain, manage, repair, replace or otherwise to protect the functions and values of the easement or 30-year contract area.

(d) As required by the terms of the easement deed as described in §1468.37(a)(2)(ii) or 30-year contract as described in §1468.37(b)(2)(ii), NRCS may, in its sole discretion, authorize the landowner to conduct compatible uses as defined in this part on the easement or contract area. Compatible use authorizations are time-limited and may be modified or rescinded at any time by NRCS. In evaluating and authorizing compatible uses of the easement or contract area, NRCS will—

(1) Consider whether the authorized use will facilitate the practical administration and management of the land subject to the easement or contract; and

(2) Ensure that the authorized use furthers the functions and values for which the easement or 30-year contract was enrolled.

§ 1468.39 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement involving the landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement or 30-year area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's failure to comply with easement obligations.

(3) If there is failure to comply with easement obligations, the easement will remain in effect, and NRCS may, in addition to any other remedy available to the United States, retain any payment otherwise required to be paid under this part and require the refund of any payment previously made under this part.

(b) *30-year contract or wetland reserve easement restoration agreements violations.* (1) If NRCS determines that a landowner is in violation of the terms of a 30-year contract or wetland reserve easement restoration agreement, or documents incorporated by reference into the 30-year contract or wetland reserve easement restoration agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation. If the violation continues, NRCS may terminate the 30-year contract or wetland reserve easement restoration agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 30-year contract or wetland reserve easement restoration agreement termination is effective immediately upon a determination by the NRCS that the landowner has—

(i) Submitted false information,

(ii) Filed a false claim, or

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(3) If NRCS terminates a 30-year contract or wetland reserve easement restoration agreement, the landowner will forfeit all rights for future payments under the 30-year contract or wetland reserve easement restoration agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3830 *et seq.*

SOURCE: 70 FR 15212, Mar. 25, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Marianna Islands.

(c) The Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of an Indian Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Indian Tribe or Tribal Nation and the NRCS Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land. This includes land of varying cover types, primarily managed through a low input system, for the production of food, fiber or other agricultural products.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the applicant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in 7 U.S.C. 1991(a). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to §1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or Tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

Conservation system means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.

Enhancement payment means CSP payments available to all tiers as described in §1469.23(d).

Enrollment categories means a classification system used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in §1469.23(b).

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop-lines in cases where farming practices make it probable that such crop-line is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at*http://www.nrcs.usda.gov/technical/efotg*.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber or other agricultural products.

Hayland means a subcategory of ''cropland'' managed for the production of forage crops that are machine harvested. The crop may be grasses, legumes, or a combination of both.

Incidental forest land means forested land that includes all nonlinear forested riparian areas (*i.e.,* bottomland forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standards will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

Indian Tribe means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices and measures that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, energy management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

(1) With direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the conservation stewardship contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the National Institute of Food and Agriculture, the conservation district, and other Federal, State, and local government agencies, including Indian Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in § 1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in § 1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and any signatory to a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Practice life span means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

Priority resource concern means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

Producer means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

Quality criteria means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, prairie, many wetlands, some deserts, tundra, coastal marshes and wet meadows are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource management system means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of NRCS.

Secretary means the Secretary of the U.S. Department of Agriculture.

Sharecropper means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

Soil quality means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship payment means the CSP base payment component of the payment as described in § 1469.23(a).

Structural practice means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the activities as defined in 7 CFR part 1466.

Technical Service Provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

Tenant means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds there from.

Tier means one of the three levels of participation in CSP.

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

Watershed or regional resource conservation plan means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

Wetlands Reserve Program (WRP) means the Commodity Credit Corporation program administered by NRCS pursuant to 16 U.S.C. 3837–3837f.

[70 FR 15212, Mar. 25, 2005, as amended at 76 FR 4806, Jan. 27, 2011]

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and

contract requirements that may be included in a CSP sign-up notice pursuant to §1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) *Applicants may submit only one application for each sign-up.* Producers who are participants in an existing conservation stewardship contract are not eligible to submit another application.

(c) *Eligible applicants.* To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner;

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations);

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with §1469.7(a); and

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to information related to eligibility criteria in the sign-up notice, and information to verify the applicant's status as a beginning or a limited resource farmer or rancher.

(d) Eligible land:

(1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

(ii) Private non-industrial forested land that is an incidental part of the agricultural operation;

(iii) Agricultural land that is Tribal, allotted, or Indian trust land;

(iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, turn rows, intermingled small wet areas or riparian areas); or

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

(2) The following land is not eligible for enrollment in CSP:

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

(iii) Land enrolled in the Grassland Reserve Program;

(iv) Public land including land owned by a Federal, State or local unit of government;

(v) Land referred to in paragraphs (d)(2)(i), (ii) (iii) and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets the minimum level of treatment on the eligible land and may be described in the conservation stewardship plan.

(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (d)(1)(iv) of this section, and other

lands, identified in paragraph (d)(1)(v) of this section under the control of the applicant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) *Conservation standards*—(1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the eligible land uses within the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all eligible land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section for all eligible land uses on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in §1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive.

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment addresses the risks that nutrients, pesticides, sediment, and salinity present to water quality by meeting or exceeding the quality criteria for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water.

(iii) The Chief may make minor exceptions to criteria for areas, such as tropical and tundra regions, where technology tools are being refined or testing is needed to review performance data.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides for:

(i) A forage-animal balance;

(ii) Proper livestock distribution;

(iii) Timing of use; and

(iv) Managing livestock access to water courses.

(4) The minimum level of treatment for Tier III:

(i) The minimum level of treatment for Tier III is having a fully implemented resource management system that meets the quality criteria for the local NRCS FOTG for all applicable resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is

considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50; and

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 using a general or species specific habitat assessment guide; and

(ii) All riparian corridors, including streams and natural drainages, within the agricultural operation are buffered to restore, protect, or enhance riparian resources. Riparian corridors, as appropriate, will be managed or designed to intercept sediment, nutrients, pesticides, and other materials in surface runoff; reduce nutrients and other pollutants in shallow subsurface water flow; lower water temperature; and provide litter fall or structural components for habitat complexity or to slow out-of-bank floods.

(5) In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

§ 1469.6 Enrollment criteria and selection process.

(a) *Selection and funding of priority watersheds.* (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues e.g., location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) *Enrollment categories.* The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories may be defined by criteria related to resource concerns and levels of historic conservation treatment, including the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

(i) Willingness of the applicant to participate in local conservation enhancement activities;

(ii) Targeting program participation for Limited Resource Producers;

(iii) Targeting program participation to water quality priority areas for nutrient or pest management;

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) *Sign-up process.* (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in § 1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in § 1469.21;

(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;

(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;

(vi) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(vii) The schedule for the sign-up process, including the deadline(s) for applying.

(2) NRCS will accept applications according to the timeframes specified in the sign-up notice.

(d) *Selection of contracts.* (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category and subcategory based on the criteria specified in the sign-up notice and into a Tier based on the criteria in 1469.5(e). Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the enrollment categories and subcategories funded in the given sign-up, NRCS will make payments as described in the contract in return for the implementation and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

§ 1469.7 Benchmark condition inventory and conservation stewardship plan.

(a) The benchmark condition inventory and associated case file information must include:

(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage;

(2) A description of the applicant's production system(s) on the agricultural operation to be enrolled;

(3) The existing conservation practices and resource concerns, problems, and opportunities on the operation;

(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans;

(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures; and,

(6) A list of enhancements that the applicant may be willing to undertake as part of their contract.

(b) *Conservation stewardship plan.* (1) The conservation stewardship plan and associated case file information must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A verified benchmark condition inventory as described in § 1469.7(a);

(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;

(v) A description and implementation schedule of—

(A) Individual conservation practices and measures to be maintained during

the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up,

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns,

(C) Eligible enhancement activities as selected by the applicant and approved by NRCS, and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of the conservation activities that is required for a contract to include a transition to a higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS and described to the applicant.

(2) The conservation stewardship plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(3) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

§ 1469.8 Conservation practices and activities.

(a) *Conservation practice and activity selection.* (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief's designee provides the list, it will be approved by the Director of the Financial Assistance Programs Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice or activity will address;

(iv) Locally available technology;

(v) New and emerging conservation technology;

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

(2) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except as provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application to the program.

(d) New practice payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract, unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level; however, the State Conservationist may supplement specific criteria to meet localized conditions within the State or areas.

§ 1469.9 Technical assistance.

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: Assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation stewardship plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and quality assurance activities.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the conservation stewardship contracts and contract payments.

(e) Conservation stewardship plans will be developed by NRCS certified conservation planners.

Subpart B—Contracts and Payments

§ 1469.20 Application for contracts.

(a) Applications must include:

(1) A completed self-assessment workbook;

(2) Benchmark condition inventory and conservation stewardship plan in accordance with § 1469.7 for the eligible land uses on the entire operation or, if Tier I, for the portion being enrolled;

(3) Any other requirements specified in the sign-up notice;

(4) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP; and,

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice.

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Participants can only have one active contract at any one time.

§ 1469.21 Contract requirements.

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other provisions, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion of land being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

(b) Program participants will only receive payments from one conservation stewardship contract.

(c) CSP participants must address the following requirements or additional resource concerns to the minimum level of treatment by the end of their conservation stewardship contract:

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirements:

(i) Address an additional locally significant resource concern, as described in section III of the NRCS FOTG over the entire agricultural operation. Applicants may satisfy this requirement by demonstrating that the locally significant resource concern is not applicable to their operation or that they have already addressed it in accordance with NRCS'; quality criteria; and

(ii) Additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) *Transition to a higher tier of participation.* (1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require

a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract which transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and,

(iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract which transitions to a higher tier will be modified to receive the higher payments once the required level of treatment has been achieved and field verified by NRCS.

(4) A contract which includes a transition from Tier I to Tier II or III may be adjusted in length up to 10 years beginning from the original contract date.

(e) A conservation stewardship contract must:

(1) Incorporate by reference the conservation stewardship plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to—

(i) Implement and maintain the practices as identified and scheduled in the conservation stewardship plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements,

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract,

(iii) Comply with the terms of the contract, or documents incorporated by reference into the contract. NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct any violation and comply with the terms of the contract and attachments thereto. If a violation continues, the State Conservationist may terminate the conservation stewardship contract, and

(iv) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP;

(4) Specify the requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments—

(i) Relate to the schedule for implementing additional conservation measures as described in the conservation stewardship plan,

(ii) Relate to the actual implementation of additional conservation measures as described in the conservation stewardship plan, and

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation; and,

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(f) Practices scheduled in contracts must be applied and maintained within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract.

(h) Participants must:

(1) Implement the conservation stewardship contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(i) NRCS will determine the payments under the contract as described in §1469.23.

(j) For contracts encompassing the entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

§ 1469.22 Conservation practice operation and maintenance.

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which a payment was received to ensure that the new practice or enhancement achieves its intended purpose for the life span of the conservation treatment, as identified in the contract or conservation stewardship plan, as determined by NRCS.

(c) Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract whether or not an existing practice payment is made.

(d) NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through the CSP in an appropriate manner, NRCS will initiate contract violation procedures as specified in § 1469.25. If an existing practice is part of a system that meets the quality criteria, but does not technically meet NRCS minimum practice standards, the practice must be modified or updated to meet the standard according the FOTG as specified in § 1469.25(a) of this part.

§ 1469.23 Program payments.

(a) *Stewardship component of CSP payments.* (1) The conservation stewardship plan, as applicable, divides the land area to be enrolled in the CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, pastured cropland and range land, among other categories.

(2) NRCS will determine an appropriate stewardship payment rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraph (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

(3) NRCS will compute the stewardship component of the CSP payment as the product of: the number of acres in each land use category (not including ''other'' or land not in the applicant's control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II payments, and 15 percent for Tier III payments.

(4) Other incidental parcels as defined in § 1469.5(d)(1)(iv) may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Payment is limited to not more than ten percent of the contract acres. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in § 1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) *Existing practice component of CSP payments.* (1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with §1469.8(a).

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

(c) *New practice payments.* (1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with §1469.8(a).

(2) If the conservation stewardship contract requires the implementation of a new structural or land management practice, NRCS may pay a percentage of the cost of installing the new practice. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(4) Cost-share payments may be provided by other programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(5) If additional practices are installed or implemented to advance a contract from one tier of participation to a higher tier, the practice must be certified as meeting FOTG practice standards by NRCS.

(6) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(7) NRCS will not pay a new practice payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(8) The Chief may reduce the rates in any given sign-up notice.

(d) *Enhancement component of CSP payments.* (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation stewardship plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy management as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the contract's

Tier of participation as outlined in the sign-up notice and as described in §1469.5(e) and the contract requirements in §1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up notice; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation stewardship plan as outlined in the sign-up notice.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet the conservation compliance plan requirements found in 7 CFR Part 12.

(5) *Eligible enhancement payments.* (i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each practice and activity.

(ii) An enhancement payment will be made to encourage a producer to perform or continue a management practice or activity, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project that produces enhanced environmental performance and benefits or produces information and data to improve a resource concern or update the NRCS technical guides. Enhancement payments will be:

(A) For activities where NRCS can demonstrate the economic value of the environmental benefits, based on a given activity's expected environmental benefit value. The payment may not exceed the activity's expected economic value; or

(B) For activities where NRCS cannot demonstrate the economic value of the environmental benefits, a rate that will not exceed a producer's cost to implement a given activity.

(iii) NRCS will post the list of approved enhancement activities and payment amounts for each activity concurrent with the CSP sign-up notice.

(6) The Chief may set a not-to-exceed limit or variable payment rate for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

(1) $20,000 per year for a Tier I conservation stewardship contract,

(2) $35,000 per year for a Tier II conservation stewardship contract, or

(3) $45,000 per year for a Tier III conservation stewardship contract.

(4) Stewardship components of CSP payments cannot exceed $5,000 per year for Tier I, $10,500 per year for Tier II, or $13,500 per year for Tier III.

(5) The new practice payment will not exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year with the exception of beginning and limited resource producers, in which case the new practice payment may be up to 65 percent.

(f) The new practice and enhancement components of the conservation stewardship contract payment may increase once the participant applies and agrees to maintain additional conservation practices and activities as described in the conservation stewardship plan.

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

(i) NRCS may not make any payments to participants for:

(1) Practices within their conservation stewardship plan that are required

to meet conservation compliance requirements found in 7 CFR Part 12;

(2) Practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the conservation stewardship contract approval;

(3) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;

(4) The purchase or maintenance of equipment;

(5) A non-land based structure that is not integral to a land based practice, as determined by the Chief; or

(6) New practices that were applied with cost-share assistance through other USDA cost-share programs.

§ 1469.24 Contract modifications and transfers of land.

(a) Contracts may be modified:

(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;

(2) As required by the State Conservationist due to changes to the type, size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program.

(b) Participants may request a modification to their contract to change their tier of participation under a conservation stewardship contract once the measures determined necessary by NRCS to meet the next tier level have been established.

(c) Contract transfers are permitted when there is agreement among all parties to the contract and the contract area remains intact.

(1) NRCS must be notified within 60 days of the transfer of interest and the transferee's acceptance of the contract terms and conditions, or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

§ 1469.25 Contract violations and termination.

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If the violation continues, the State Conservationist may terminate the conservation stewardship contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has: submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights for future payments under the contract, and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with part 1403 of this chapter. The State Conservationist may require only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(e) When making any contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the contract terms and conditions have been fully complied with before termination of the contract.

(g) In carrying out this section, the State Conservationist may consult with the local conservation district.

Subpart C—General Administration

§ 1469.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that potential participants who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among multiple applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from their performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a participant erroneously represented any fact affecting a CSP determination made in accordance with this part, the participant's conservation stewardship contract will be terminated immediately in accordance with §1469.25(b). The participant will forfeit all rights for future contract payments, and must refund payments received, plus interest, and liquidated damages as described in §1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest, and liquidated damages as determined in accordance with §1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant's interest in all conservation stewardship contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3839aa–21–3839aa–25.

SOURCE: 84 FR 60891, Nov. 12, 2019, unless otherwise noted.

Subpart A—General Provisions

§ 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year (FY) 2019 and thereafter. Contracts entered into prior to FY 2019 will use the regulations and policies in effect prior to December 20, 2018.

(b) The purpose of CSP is to encourage producers to address priority resource concerns and improve and conserve the quality and condition of natural resources in a comprehensive manner by—

(1) Undertaking additional conservation activities; and

(2) Improving, maintaining, and managing existing conservation activities.

(c) CSP is applicable in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(d) NRCS provides financial and technical assistance to eligible producers.

§ 1470.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS.

(b) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a nonstatutory, discretionary provision of this part if the Chief determines the application of that provision to a particular limited situation is inappropriate and inconsistent with the purposes of the program.

(c) To achieve the conservation goals of CSP, NRCS will—

(1) Make the program available nationwide to eligible applicants on a continuous application basis with one or more ranking periods to determine enrollments. One of the ranking periods will occur in the first quarter of each fiscal year to the extent practicable.

(2) Establish a science-based stewardship threshold for each priority resource concern at the level of management required to conserve and improve the quality and condition of a natural resource. To the extent practicable, NRCS will use scientifically developed assessment tools and guides including, but not limited to, soil erosion prediction tools, wildlife habitat assessment tools, rangeland health assessments, and soil health assessments, to establish the stewardship threshold and measure the level of improvement once the participant applies additional conservation activities to meet or exceed a resource concern.

(3) To the maximum extent feasible, manage CSP to enhance soil health.

(d) To support locally led conservation, NRCS will solicit input from State technical committees, Tribal Conservation Advisory Councils, and local working groups to develop State-level technical, outreach, and program materials, including:

(1) Establishment of ranking pools appropriate for the conduct of CSP within the State to ensure program availability and better distribution of the funds. Ranking pools may be based on watersheds, geographic areas, or other appropriate regions within a State and may consider high-priority regional and State-level priority resource concern areas;

(2) Identification of not less than five priority resource concerns in particular geographic areas or other appropriate regions within a State;

(3) Identification of resource-conserving crops that will be part of resource-conserving crop rotations; and

(4) Identification of combinations of grazing conservation activities that will be part of an advanced grazing management system.

(e) NRCS may enter into agreements with Federal, State, and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with program implementation including, but not limited to, planning activities, outreach, and providing other forms of technical assistance.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64002, Oct. 9, 2020]

§ 1470.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Advanced grazing management means the use of a combination of grazing conservation activities, as determined by NRCS, which may include management-intensive rotational grazing, that provide for—

(1) Improved soil health and carbon sequestration;

(2) Drought resilience;

(3) Wildlife habitat;

(4) Wildfire mitigation;

(5) Control of invasive plants; and

(6) Water quality improvement.

Agricultural operation means all eligible land, as determined by NRCS, whether contiguous or noncontiguous that is—

(1) Under the effective control of a producer at the time of enrollment in the program; and

(2) Operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations.

Applicant means a producer who has requested in writing to participate in CSP.

Beginning farmer or rancher means a person or legal entity who—

(1) Has not operated a farm, ranch, or nonindustrial private forest land (NIPF); or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. The requirement in this paragraph (1) applies to all members of a legal entity who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day- today labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Comprehensive conservation plan means a conservation plan that meets or exceeds the stewardship threshold for each priority resource concern identified by NRCS across all land uses included in the operation.

Conservation activities mean conservation systems, practices, enhancements, or management measures, as determined by NRCS, and may include—

(1) Structural measures, vegetative measures, and land management measures, including agricultural drainage management systems as determined by NRCS;

(2) Planning needed to address a priority resource concern;

(3) Development of a comprehensive conservation plan;

(4) Soil health planning, including planning to increase soil organic matter; and

(5) Activities that will assist a producer to adapt to, or mitigate against, increasing weather volatility.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' ''natural resource district,'' or similar name.

Conservation practice means a specified treatment, such as a structural, vegetative, or management technique commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the Field Office Technical Guide (FOTG).

Conservation stewardship plan means a plan developed in accordance with the requirements of § 1470.22.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is a binding agreement under this part for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

Effective control means possession of the land by ownership, written lease, or other legal agreement and authority to act as decision maker for the day-to-day management of the operation both at the time the applicant enters into a stewardship contract and for the duration of the contract.

Eligible land means:

(1) Private and Tribal land upon which:

(i) Agricultural commodities, livestock, or forest-related products are produced; and

(ii) Priority resource concerns could be addressed through a contract under the program. Eligible land includes cropland, grassland, rangeland, pastureland, nonindustrial private forest land, and other agricultural lands including cropped woodland, marshes, and agricultural land used or capable of being used for the production of livestock as determined by the Chief; and

(2) Publicly owned land where the—

(i) Land is associated with the land described in paragraph (1) of this definition and is a working component of the producer's agricultural or forestry operation;

(ii) Producer has control of the land for the term of the contract; and

(iii) Conservation activities the producer will implement on the public land are necessary and will address an identified priority resource concern.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance that allows a producer to address levels of conservation beyond what the minimum conservation practice standard requires. Enhancements, alone or in combination with other enhancements and practices, result in conservation systems that are equal to or greater than the performance level for the planning criteria identified for a given resource concern. Planning criteria are defined for each resource concern in Section III—Conservation Management Systems, Field Office Technical Guide.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, planning criteria, and standards for planning and implementation of conservation practices. The FOTG contains detailed information on the planning standard to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared. (See *https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/* to access your State FOTG.)

Historically underserved producer means a person, joint operation, legal entity, or Indian Tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher.

Indian lands mean land held in trust by the United States for individual Indians or Indian Tribes, or all land titles held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or land which is subject to the rights of use, occupancy, and/or benefit of certain Indian Tribes. This term also includes lands for which the title is held in fee status by an Indian, Indian family, or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR part 1400, an entity created under Federal or State law that owns land or an agricultural commodity, product, or

livestock; or produces an agricultural commodity, product, or livestock.

Limited resource farmer or rancher means:

(1) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce Data).

(3) A limited resource farmer or rancher also includes a legal entity or joint operation if all individual members independently qualify under paragraphs (1) and (2) of this definition.

Liquidated damages means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Management-intensive rotational grazing means a strategic, adaptively managed multipasture grazing system in which animals are regularly and systematically moved to a fresh pasture in a manner that, as determined by NRCS:

(1) Maximizes the quantity and quality of forage growth;

(2) Improves manure distribution and nutrient cycling;

(3) Increases carbon sequestration;

(4) Improves the quality and quantity of cover for wildlife;

(5) Provides permanent cover to protect the soil from erosion; and

(6) Improves water quality.

Management measure means one or more specific actions that is not a conservation practice, but which has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of USDA which has responsibility for administering CSP using the funds, facilities, and authorities of the Commodity Credit Corporation.

Nonindustrial private forest land means rural land, as determined by NRCS, that has existing tree cover or is suitable for growing trees, and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to maintain existing conservation activities to at least the level of conservation performance identified at the time of enrollment, and maintain additional conservation activities installed and adopted over the contract period. Operation includes the administration, management, and performance of nonmaintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the activity, repairing damage, and replacement or restoration of the activity to its original condition if one or more components fail.

Participant means a producer that has applied for participation and has entered into a CSP contract and is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

Payment means financial assistance provided to the participant under the terms of the CSP contract.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Priority resource concern means a natural resource concern or problem, as determined by NRCS, that is likely to be addressed successfully through implementation of conservation activities under this program.

Producer means a person, legal entity, joint operation, or Indian Tribe who either has an interest in the agricultural operation or who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

Resource-conserving crop means a crop that is one of the following, as determined by NRCS:

(1) A perennial grass;

(2) A legume grown for use as a cover crop, forage, seed for planting, or green manure;

(3) A legume-grass mixture or grass-forb mixture; or

(4) A non-fragile residue or high residue crop or a crop that efficiently uses soil moisture, reduces irrigation water needs, or is considered drought tolerant.

Resource-conserving crop rotation means a crop rotation that—

(1) Includes at least one resource-conserving crop as determined by NRCS;

(2) Reduces erosion;

(3) Improves soil fertility and tilth;

(4) Interrupts pest cycles;

(5) Builds soil organic matter; and

(6) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities.

State technical committee means a committee established by the NRCS in a State pursuant to 7 CFR part 610, subpart C.

Stewardship threshold means the level of management required, as determined by NRCS, to conserve and improve the quality and condition of a natural resource through the use of—

(1) Planning criteria under a resource management system;

(2) Predictive analytics tools or models developed or approved by NRCS;

(3) Data from past and current enrollment in the program; and

(4) Other methods that measure conservation and improvement in priority resource concerns, as determined by the Chief.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, Indian Tribes, forest producers, and other eligible entities, such as conservation planning, technical consultation, and assistance with the design and implementation of conservation activities; and

(2) Technical infrastructure, including processes, tools, and agency functions needed to support delivery of technical services; such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical service provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency certified pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or selected by USDA to assist USDA in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with USDA.

Veteran farmer or rancher means a producer who meets the definition in section 2501(a)(7) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279).

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64002, Oct. 9, 2020; 86 FR 41702, Aug. 3, 2021]

§ 1470.4 Allocation and management.

(a) The Chief will allocate funds to States, and may adjust the weighting of the following allocation factors to provide for equitable geographic distribution and meet enrollment goals, based on the consideration of—

(1) Each State's proportion of eligible land to the total acreage of eligible land in all States;

(2) The extent and magnitude of the conservation needs associated with agricultural production in each State;

(3) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs; and

(4) Other considerations determined by the Chief to achieve equitable geographic distribution of program funds.

(b) The Chief will allocate funding to the States to support organic production and transition to organic production based on—

(1) The number of certified and transitioning organic operations within the State; and

(2) The number of acres of certified and transitioning organic production within the State.

(c) Of the funds made available for each of fiscal years 2019 through 2023 to carry out CSP, NRCS will, to the maximum extent practicable, use at least:

(1) Five percent to assist beginning farmers or ranchers; and

(2) Five percent to assist socially disadvantaged farmers or ranchers.

(d) NRCS may adjust State allocations or reallocate funds in any fiscal year if a State cannot use their full allocation.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64002, Oct. 9, 2020]

§ 1470.5 Outreach activities.

(a) NRCS will establish program outreach activities at the national, State, and local levels to inform potential applicants who control eligible land that they may be eligible to apply for program assistance.

(b) NRCS will specifically conduct outreach to historically underserved producers.

(c) NRCS will provide outreach so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.

§ 1470.6 Eligibility requirements.

(a) *Eligible applicant.* To apply for CSP, a producer must—

(1) Be the operator, owner, or other tenant of an agricultural operation in the Farm Service Agency (FSA) farm records management system. Applicants must establish or update records with FSA before NRCS will consider an applicant as eligible;

(2) Share in the risk of producing a crop; share in the crop available for marketing from the farm (or would have shared had the crop been produced); and participate in the daily management, administration, and performance of the operation for the land included in the contract;

(3) Have effective control of the land unless an exception is made by the Chief in the case of land administered by the Bureau of Indian Affairs, Indian lands, or other instances in which NRCS determines that there is sufficient assurance of control;

(4) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(5) Be in compliance with adjusted gross income provisions found at 7 CFR part 1400;

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors; conservation activity and production system records; information to verify the applicant's status as an historically underserved producer, if applicable; and payment eligibility as established by 7 CFR part 1400; and

(7) Provide a list of all members of the legal entity or joint operation, as applicable, and embedded entities along with members' tax identification numbers and percentage interest in the legal entity or joint operation. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payments.

(b) *Eligible land.* A contract application must include all of the eligible land on an applicant's agricultural operation. A participant may submit an application(s) to enter into an additional contract(s) for newly acquired or newly eligible land, which would then compete with other applications in a subsequent ranking period.

(c) *Ineligible land.* The following lands (even if covered by the definition of eligible land in § 1470.3) are part of the agricultural operation, but are not eligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program (CRP), 7 CFR part 1410, unless—

(i) The conservation reserve contract will expire at the end of the fiscal year in which the land is to be enrolled in the program; and

(ii) Conservation reserve program payments for land enrolled in the program cease before the first program payment is made to the applicant under this subchapter;

(2) Land enrolled in a wetland reserve easement through the Agricultural Conservation Easement Program, 7 CFR part 1468; and

(3) Land used for crop production after December 20, 2018, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless the land does not meet such requirements because that land—

(i) Had previously been enrolled in CRP;

(ii) Has been maintained using long-term crop rotation practices as determined by the NRCS; or

(iii) Is incidental land needed for efficient operation of the farm or ranch as determined by NRCS.

§ 1470.7 Conservation activities.

(a) NRCS will record in the conservation stewardship plan the additional conservation activities the participant agrees to implement under the conservation stewardship contract.

(b) NRCS will make available to the public the list of conservation activities an applicant may choose to implement and manage through the CSP.

(c) NRCS may make available bundles of conservation activities that when implemented together address resource concerns in a more comprehensive and cost-effective manner.

§ 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a TSP as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is available and program specifications are appropriate so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

(e) NRCS may utilize the services of State foresters and existing technical assistance programs such as the Forest Stewardship Program of the U.S. Forest Service, in coordinating assistance to NIPF owners.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Applicants may submit an application for CSP at any time to enroll all of the eligible land included in their agricultural operation.

(b) *Stewardship threshold requirement.* To be eligible to participate in CSP, an applicant must submit to NRCS for approval, a contract offer for the agricultural operation that—

(1) Demonstrates that the applicant's conservation activities, at the time of contract offer, meet or exceed the stewardship threshold for at least two priority resource concerns; and

(2) Would, at a minimum, meet or exceed the stewardship threshold for at least one additional priority resource concern by the end of the conservation stewardship contract by:

(i) Installing and adopting additional conservation activities; and

(ii) Improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract application is accepted by NRCS; and

(3) Provides a map, aerial photograph, or overlay that—

(i) Identifies the applicant's agricultural operation; and

(ii) Delineates eligible land with associated acreage amounts.

(c) *Evaluation of contract applications.* NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the last

quarter of the previous fiscal year or the first quarter of the current fiscal year.

(2) In evaluating CSP applications for new enrollment or for renewal, NRCS will rank applications based on the following factors:

(i) The natural resource conservation and environmental benefits that result from the conservation treatment on all State identified priority resource concerns at the time of submission of the application;

(ii) The degree to which the proposed conservation activities increase natural resource conservation and environmental benefits; and

(iii) Other consistent criteria, as determined by NRCS, including criteria the Chief determines are necessary to ensure that national, State, and local priority resource concerns are effectively addressed.

(3) In the event that two or more applications receive the same ranking under paragraph (c)(2) of this section, NRCS shall rank those contracts based on the extent to which the actual and anticipated conservation benefits from each contract are provided at the lowest cost relative to other similarly beneficial contract offers.

(4) NRCS may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(d) *Ranking pools.* States will establish ranking pools in accordance with § 1470.2(d)(1).

(1) Nonindustrial private forest land (NIPF) applications will compete in separate ranking pools. An applicant with both NIPF and other eligible land may submit one application for NIPF and one application for all other eligible land.

(2) Within each State or established ranking pool, NRCS will address conservation access for certain farmers or ranchers, including—

(i) Socially disadvantaged farmers or ranchers;

(ii) Beginning farmers or ranchers;

(iii) Producers who are veteran farmers or ranchers; and

(iv) Organic producers or producers who are transitioning to organic.

(e) *Application preapproval.* NRCS will make application preapproval determinations throughout the fiscal year based on eligibility and ranking score.

(f) *Field verification.* NRCS will conduct onsite field verification prior to entering into a conservation stewardship contract to substantiate the accuracy of the information provided by applicants during the application process and to verify applicability of planned conservation activities.

§ 1470.21 Contract requirements.

(a) After NRCS approves the application and develops the conservation stewardship plan in accordance with § 1470.22, NRCS will enter into a conservation stewardship contract with the participant to enroll the participant's agricultural operation in the program.

(b) The conservation stewardship contract will—

(1) Be for a period of 5 years;

(2) Incorporate by reference the conservation stewardship plan;

(3) State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;

(4) Incorporate all provisions as required by law or statute, including requirements that the participant will—

(i) Implement the conservation stewardship plan as described in § 1470.22;

(ii) Operate and maintain conservation activities on the agricultural operation consistent with § 1470.23;

(iii) Comply with the terms of the contract or documents incorporated by reference into the contract;

(iv) Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with § 1470.27;

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with § 1470.25;

(vi) Maintain and supply information as requested by NRCS, to determine compliance with the conservation

stewardship plan and any other requirements of the program; and

(vii) Not conduct any activities on the agricultural operation that would tend to defeat the purposes of the program, as determined by NRCS;

(5) Permit all economic uses of the eligible land that—

(i) Maintain the agricultural or forestry nature of the land; and

(ii) Are consistent with the conservation purposes of the contract;

(6) Include a provision to ensure that NRCS will not consider a participant in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including a disaster or related condition, as determined by NRCS; and

(7) Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

§ 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the NRCS ''National Planning Procedures Handbook'' to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant's objectives and decisions to meet or exceed stewardship thresholds for identified resource concerns through implementation or adoption of one or more conservation activities. The plan will document the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Supporting documentation for the participant's plan will include—

(1) Identification and inventory of priority resource concerns;

(2) Establishing benchmark data on the condition of existing conservation activities at the time of enrollment;

(3) A plan map delineating the agricultural operation included in the program contract with associated acreage amounts;

(4) For organic producers or producers transitioning to organic production, documentation that supports the participant's transition to or participation in the National Organic Program; and

(5) Other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

Throughout the conservation stewardship contract period, the participant will maintain and manage existing conservation activities across the entire agricultural operation to at least the benchmark level of conservation performance identified at the time of enrollment for the conservation stewardship contract period. The participant will also maintain and manage additional activities installed and adopted under the conservation stewardship contract.

§ 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide, as appropriate, annual payments under the program to compensate a participant for installing and adopting additional conservation activities, and for improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time NRCS accepts the contract offer. A split-rate annual payment structure is used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation.

(1) NRCS will make equal annual payments for the existing activity portion of the payment, specific to the operation, based on the land uses and NRCS assessment of existing stewardship. NRCS will make payments for the additional conservation activities based on the complexity and extent of the individual activities completed by the participant during the previous fiscal year. Additional activities implemented may vary from year to year, so the total annual payment may fluctuate;

(2) In order to receive an annual payment for a land use, participants must schedule, install, and adopt at least one additional conservation activity on the land use type;

(3) At least one additional conservation activity must be implemented within the first 12 months of the contract. NRCS may extend this timeframe if NRCS determines that the participant is unable to complete the conservation activity for reasons beyond their control;

(4) NRCS will base the annual payment rates, to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training;

(ii) Income foregone by the participant;

(iii) Expected conservation benefits;

(iv) The extent to which priority resource concerns will be addressed through the installation and adoption of conservation activities on the agricultural operation;

(v) The level of stewardship in place at the time of application and maintained over the term of the contract;

(vi) The degree to which the conservation activities will be integrated across the entire agricultural operation for all State identified priority resource concerns over the term of the contract; and

(vii) Such other factors as determined by the Chief; and

(5) Participants will receive payments for cover crop activities at not less than 125 percent of the annual payment amount, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt or improve a resource-conserving crop rotation or adopt advanced grazing management, as defined by NRCS, to achieve beneficial crop or grazing rotations as appropriate for the eligible land of the participant.

(1) NRCS will determine whether a resource-conserving crop rotation or advanced grazing management is eligible for supplemental payments based on whether the resource-conserving crop rotation or advanced grazing management is designed to provide natural resource conservation and production benefits;

(2) A participant must adopt or improve the resource-conserving crop rotation or adopt advanced grazing management during the term of the contract to be eligible to receive a supplemental payment;

(3) Supplemental payments will be based, to the maximum extent practicable, on the factors from paragraph (a)(4) of this section; and

(4) Supplemental payments will be not less than 150 percent of the annual payment amount, as determined by NRCS.

(c) *Comprehensive conservation plan.* Participants choosing to develop a comprehensive conservation plan through their conservation stewardship contract will receive a one-time payment for this activity. NRCS will determine the payment based on the number of priority resource concerns addressed in the comprehensive conservation plan and the number of types of land uses included in the plan. Participants will not be eligible to receive payment for plans developed prior to their enrollment in a conservation stewardship contract.

(d) *Minimum contract payment.* NRCS may make a minimum contract payment to a participant in any fiscal year in which the contract's payment amount total is less than a rate determined equitable by the Chief based upon the effort required by a participant to comply with the terms of the contract.

(e) *Timing of payments.* NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. For newly enrolled contracts, NRCS will make payments as soon as practicable after October 1 following the fiscal year of enrollment.

(f) *Noncompensatory matters.* NRCS will not provide a CSP payment to a participant for—

(1) New conservation activities applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities, or associated waste transport or transfer devices for animal feeding operations;

(3) Conservation activities for which there is no cost incurred or income foregone by the participant; or

(4) New conservation activities initiated or implemented prior to contract approval, unless NRCS granted a waiver prior to the participant starting the activity.

(g) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed $200,000 under all CSP contracts entered into during fiscal years 2019 through 2023, excluding funding arrangements with Indian Tribes, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(h) *Contract limits.* Each conservation stewardship contract will be limited to $200,000 over the term of the contract period, except that conservation stewardship contracts with any joint operation will be limited to $400,000 over the term of the contract period.

(i) *Scope of payment and contract limitations for Indian Tribes and individual Tribal members.* Contracts with Indian Tribes are not subject to payment or contract limitations but payment limitations in paragraph (f) of this section apply to individual Tribal member(s). Indian Tribes and the Bureau of Indian Affairs will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of enrollment will cover the entire contract period. The Tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations.

(j) *Tax Identification Number.* To be eligible to receive a CSP payment, all applicants must provide a tax identification number. In accordance with 7 CFR part 1400, applicants who participate as a legal entity or joint operation must provide a list of all members of the legal entity or joint operation and associated embedded entities, along with the members' Social Security numbers and percentage interest in the legal entity or joint operation. NRCS attributes payments directly to legal entity members for the purpose of complying with paragraph (f) of this section.

(k) *Unique identification numbers.* American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that uses a unique identification number as an alternative to a tax identification number will use that identifier for all CSP contracts in which they participate.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64002, Oct. 9, 2020]

§ 1470.25 Contract modifications and transfers of land.

(a) NRCS may modify a conservation stewardship contract, if—

(1) The participant agrees to the modification; and

(2) NRCS determines the modification is in the public interest.

(b) NRCS may allow modification to a conservation stewardship contract to accommodate certain changes in the agricultural operation, including—

(1) Removing contract acres the participant will enroll in CRP, protect with a wetland reserve easement through the Agricultural Conservation Easement Program (ACEP), or enroll in other Federal or State programs that offer greater natural resource protection through an easement, long-term contract, land use restrictions, or similar authority as determined by NRCS. NRCS may reduce payments for such modified contracts to reflect the modified acreage and performance. Participants will not be subject to liquidated damages or refund of payments received for enrolling land in these programs.

(2) Accommodating other limited changes, in response to a participant's request made prior to implementing the change, that would take land out of production or convert an area under contract to a different land use. These situations apply only to land for which the participant has and will retain effective control, and not for situations of involuntary loss of land.

(3) Allowing a participant to substitute a conservation activity as long

as the level of conservation performance agreed to at the time of enrollment remains the same or is improved with implementation of the substitute activity.

(i) Adjustments to existing activities may occur consistent with conservation performance requirements from § 1470.23.

(ii) [Reserved]

(4) Prior to approval, NRCS must determine that any modification under this section is authorized by the provisions of 16 U.S.C. 3838d–3838g.

(c) A contract modification under this section will not increase the scheduled annual payments under the program, except to make minor adjustments to a conservation activity, as determined by NRCS; implement an appeal determination; correct an administrative error as approved by NRCS; or to adjust payment limitations. Contracts transferred from an individual or entity to a joint operation will retain the original contract limit outlined in § 1470.24(h).

(d) Within the time specified in the contract, a participant must provide NRCS with written notice regarding any voluntary or involuntary loss of control of any acreage under the CSP contract, which includes changes in a participant's ownership structure or corporate form. Failure to provide timely notice may result in termination of the entire contract.

(e) Unless NRCS approves a transfer of contract rights under this paragraph (e), a participant losing control of any acreage may constitute a violation of the CSP contract and NRCS may terminate the contract and require a participant to refund all or a portion of any financial assistance provided. NRCS may approve a transfer of the contract if—

(1) NRCS receives written notice that identifies the new producer who will take control of the acreage, as required in paragraph (d) of this section;

(2) The new producer meets program eligibility requirements within a reasonable time frame, as specified in the CSP contract;

(3) The new producer agrees to assume the rights and responsibilities for the acreage under the contract; and

(4) NRCS determines that the purposes of the program will continue to be met despite the original participant's losing control of all or a portion of the land under contract.

(f) Until NRCS approves the transfer of contract rights, the new producer is not a participant in the program and may not receive payment for conservation activities commenced prior to approval of the contract transfer.

(g) NRCS may not approve a contract transfer and may terminate the contract in its entirety if NRCS determines that the loss of control of the land was voluntary, the new producer is not eligible or willing to assume responsibilities under the contract, or the purposes of the program cannot be met.

(h) In the case of death, incompetency, or disappearance of any participant, NRCS may, as identified in the CSP contract—

(i) Terminate the contract;

(ii) Make any payments due under this part pursuant to guidance under applicable provisions of 7 CFR parts 707 and 1400 (including payment to successor(s)); or

(iii) Take any further action that the Chief determines is fair and reasonable in light of all of the circumstances.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64003, Oct. 9, 2020]

§ 1470.26 Contract renewal.

(a) During the first half of the fifth year of the initial contract period, NRCS may allow a participant to apply and compete for the opportunity under § 1470.20 to renew the contract to receive payments for an additional 5-year period, subject to the availability of funds, if the participant meets criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must—

(1) Be in compliance with the terms of their existing contract as determined by NRCS;

(2) Add any newly acquired eligible land that is part of the agricultural operation that NRCS determines must be included in the renewal contract;

(3) Agree to adopt and continue to integrate new or improved conservation

activities across the entire agricultural operation, demonstrating continued improvement during the additional 5-year period, as determined by NRCS; and

(4) By the end of the renewal contract period, agree to meet or exceed the stewardship threshold of at least two additional priority resource concerns on the agricultural operation; or to adopt or improve conservation activities, as determined by NRCS, to achieve higher levels of conservation performance with respect to not less than two existing priority resource concerns that are specified by the Chief in the initial contract.

(c) NRCS will determine a participant ineligible for a new CSP contract on an agricultural operation for 2 years following expiration of their prior contract if the participant does not enter a renewal contract on the agricultural operation at the end of the prior contract period.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64003, Oct. 9, 2020]

§ 1470.27 Contract violations and termination.

(a) NRCS may terminate a contract:

(1) Without the consent of the participant where NRCS determines that the participant—

(i) Violated the contract; or

(ii) Is unable to comply with the terms of the contract as the result of conditions beyond their control.

(2) With the consent of the participant if NRCS determines that the termination is in the public interest. NRCS will not assess liquidated damages for contracts terminated under this basis.

(b) When NRCS terminates a contract in accordance with paragraph (a) of this section, NRCS may allow a participant to retain payments already received based on—

(1) The level of effort the participant has made to comply with the contract. NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation activity has achieved the expected conservation performance improvement, is not adversely affected by any contract violation or the absence of other conservation activities that would have been installed under the contract, and has met the associated operation and maintenance requirement of the activity; or

(2) Hardship situations where circumstances beyond the participant's control prevented the participant from complying with the contract. Any hardship affecting the participant's ability to comply with the contract must not have existed at the time the contract was executed by the participant. Participants may submit a written request to NRCS, along with additional supporting documentation, for NRCS to consider granting a waiver of any requested repayment and/or assessment of liquidated damages.

(c) If NRCS determines that a participant is out of compliance with the contract terms or incorporated documents, NRCS will notify the participant to explain what the participant must do to regain compliance and the consequences for not correcting the violation. NRCS will give the participant reasonable time to complete all necessary corrective actions, not to exceed one year. NRCS may authorize additional time for the participant to complete the corrective actions if, during the initial period, the participant was unable to complete the corrective actions due to circumstances beyond their control. If a participant's contract continues in violation, NRCS may:

(1) Terminate the contract in accordance with paragraph (e) of this section; or

(2) Where NRCS determines the violation does not warrant termination, NRCS may require the participant to:

(i) Refund all or a portion of the payments provided; or

(ii) Agree to such adjustments to the contact terms as determined appropriate by NRCS.

(d) Notwithstanding the provisions of paragraph (c) of this section, NRCS will terminate a contract, effective immediately, upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which NRCS found the participant ineligible for payments as provided in § 1470.36; or

(3) Incurred a contract violation that the participant cannot correct in a timeframe established by NRCS.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest, except as otherwise noted in paragraph (b) of this section.

§ 1470.28 Grassland conservation initiative contracts.

(a) The purpose of the grassland conservation initiative (GCI) is to assist producers in protecting grazing uses, conserving and improving soil, water, and wildlife resources, and achieving related conservation values by conserving eligible land through grassland conservation contracts.

(b) The GCI is applicable on eligible cropland for which base acres have been maintained by the FSA under section 1112(d)(3) of the Agricultural Act of 2014 (7 U.S.C. 9012(d)(3)).

(c) Producers with eligible land will have one-time election to enroll in the GCI during fiscal years 2019 through 2023. A producer may elect to enroll eligible acres in the GCI or under a general CSP contract. A producer with land eligible for the GCI may not have the same land enrolled under both a GCI and general CSP contract at the same time.

(d) Participants enrolled in the GCI must agree to meet or exceed the stewardship threshold for at least one priority resource concern before the end of the contract.

(e) A GCI plan shall:

(1) Encompass all enrolled land;

(2) Require adoption of conservation activities to address grassland resource concerns; and

(3) If crops are grown, require adoption of conservation activities that achieve conservation stewardship levels analogous to the land being planted or maintained in grass.

(f) The GCI contract will be for one 5-year term and will not be subject to renewal.

(g) GCI annual payments will be $18 per acre, not to exceed the acres enrolled in the GCI contract.

(1) GCI contracts are not subject to the payment limitations or contract limits provided in § 1470.24(f) and (g).

(2) GCI contracts are not eligible for supplemental payments as provided in § 1470.24(b).

(h) The participant may request to terminate their GCI contract at any time and retain payments already received under the contract.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

Participants must divide payments received under this part in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who have an interest in acreage being enrolled receive equitable treatment, as determined by NRCS. NRCS may refuse to enter into a contract when joint applicants seeking enrollment disagree on an applicant's eligibility to participate in the contract as a tenant.

§ 1470.31 Appeals.

A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation activities are not subject to appeal.

§ 1470.32 Compliance with regulatory measures.

Participants will be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

§ 1470.33 Access to agricultural operation.

NRCS, or its authorized representative, will have the right to enter an agricultural operation to ascertain the accuracy of any representations, including natural resource information provided by an applicant to evaluate a contract application. Access will include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS, or its authorized representative, will try to contact the participant prior to the exercise of the provision in this section.

§ 1470.34 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. NRCS will not assume the financial or technical liability for any action by a participant that was taken based on the advice of a TSP. This liability will remain with the TSP.

(b) If NRCS finds that a participant is in violation of a provision of the conservation stewardship contract or any incorporated document through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

§ 1470.35 Offsets and assignments.

(a) Any payment or portion thereof due to any participant under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government. The regulations governing offsets and withholdings found at part 3 of this title will be applicable to contract payments.

(b) Any participant entitled to any payment may assign such payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

[84 FR 60891, Nov. 12, 2019, as amended at 85 FR 64003, Oct. 9, 2020]

§ 1470.36 Misrepresentation and scheme or device.

(a) If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be determined ineligible immediately.

(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(c) A participant will refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such participant with respect to all CSP contracts if they are determined to have—

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(d) Participants determined to have committed actions identified in paragraph (c) of this section will have their interest in all CSP contracts terminated.

§ 1470.37 Environmental credits for conservation improvements.

(a) NRCS will not prohibit a participant under this part from participating in, and receiving compensation from, an environmental services market if one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with CSP purposes, as determined by NRCS. CSP participation may create environmental benefits that qualify for environmental credits under an environmental credit-trading program. NRCS will not prohibit a participant under this part from participating in, or receiving compensation from, an environmental credit-trading program, and

NRCS asserts no direct or indirect interest in these credits. However, in addition, any requirements or standards of an environmental market program in which a CSP participant simultaneously enrolls to receive environmental credits must be compatible with the purposes and requirements of the CSP contract and with this part. NRCS retains the authority to ensure that CSP purposes are met and that one of the purposes of the market is the facilitation of additional conservation benefits that are consistent with CSP purposes.

(b) The participant must meet all operation and maintenance requirements for CSP-funded activities, consistent with §§1470.21 and 1470.23. Where activities required under an environmental credit agreement may affect the land and conservation activities under a CSP contract, NRCS recommends that CSP participants request assistance with the development of a compatibility assessment prior to entering into any credit agreement. The CSP contract may be modified in accordance with policies outlined in §1470.25 provided the modifications meet CSP purposes and is in compliance with this part.

(c) CSP participants may not use CSP funds to implement conservation practices and activities that the participant is required to establish because of a court order.

PART 1471—PIMA AGRICULTURE COTTON TRUST FUND (AGRICULTURE PIMA TRUST) AND AGRICULTURE WOOL APPAREL MANUFACTURERS TRUST FUND (AGRICULTURE WOOL TRUST)

Subpart A—Agriculture Pima Trust

Sec.

1471.1 Provisions common to this subpart.
1471.2 Pima cotton payments.
1471.3 Affidavit of producers of ring spun pima cotton yarn.
1471.4 Affidavit of manufacturers of pima cotton shirts.
1471.5 Affidavit of pima cotton trade associations.

Subpart B—Agriculture Wool Trust

1471.10 Provisions common to this subpart.
1471.11 Payments to manufacturers of certain worsted wool fabrics.
1471.12 Refund of duties paid on imports of certain wool products.
1471.13 Monetization of the wool tariff rate quota.
1471.14 Wool yarn, wool fiber, and wool top duty compensation payment.

AUTHORITY: Sections 12314 and 12315, Pub. L. 113–79, 128 Stat. 649, as amended by sections 12602 and 12603, Pub. L. 115–334, 132 Stat. 4490 (7 U.S.C. 2101 note and 7101 note).

SOURCE: 86 FR 68876, Dec. 6, 2021, unless otherwise noted.

Subpart A—Agriculture Pima Trust

§1471.1 Provisions common to this subpart.

(a) *Agriculture Pima Trust*—(1) *Establishment.* The Agriculture Pima Trust has been established to provide funding for payments under this subpart.

(2) *Purpose.* The purpose of the Agriculture Pima Trust is to reduce the injury to domestic manufacturers resulting from tariffs on cotton fabric that are higher than tariffs on certain apparel articles made of cotton fabric.

(3) *Funding availability.* $16,000,000 will be available annually for eligible payments authorized under this subpart.

(4) *Definitions.* As used in this subpart:

Agriculture Pima Trust means the Pima Agriculture Cotton Trust Fund.

CCC means the Commodity Credit Corporation.

FAS means the Foreign Agricultural Service.

Secretary means the Secretary of Agriculture.

U.S. means the United States of America.

(b) *Other provisions common to this subpart*—(1) *Affidavits.* FAS shall annually, not later than February 15 of the year of the applicable payment, make affidavits available on the FAS website. Affidavits must be submitted in accordance with the instructions provided on the FAS website.

(2) *Filing deadline.* Any person filing an affidavit under this subpart for a particular year must file the affidavit not later than March 15 of the applicable calendar year.

(3) *Affirmation.* By submitting an affidavit under this subpart, an applicant

is affirming that all information contained in the application is complete and correct and that the information does not contain a false claim, statement, or representation.

(4) *Document retention.* All persons receiving a payment under this subpart must maintain all pertinent documentation for 3 years after the year of receipt of the payment.

(5) *False statements.* Persons providing false or fraudulent claims, or persons making materially false statements or representations in their affidavit, are subject to civil or criminal penalties pursuant to 18 U.S.C. 1001.

(6) *Confidentiality.* Specific business information that is marked ''business confidential'' will be protected from disclosure to the full extent permitted by law.

(7) *Review of affidavits.* Affidavits will be reviewed to determine whether they are complete and responsive to the content and form of affidavit requirements under this subpart.

(8) *Finality of determinations by Secretary.* A determination by the Secretary about a payment under this subpart shall be final and is not subject to appeal or protest.

(9) *Timing of payments.* A payment for which a person is eligible under this subpart will be disbursed not later than April 15 of the applicable year.

(10) *Sequester.* Payments covered by this subpart shall be subject to sequester of payments, if required by law.

§ 1471.2 Pima cotton payments.

From available funds in the Agriculture Pima Trust, CCC will annually make payments as follows:

(a) Twenty-five percent of the amounts in the Agriculture Pima Trust shall be paid to one or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods, as determined by the Secretary, during the calendar year immediately preceding the payment.

(b) Twenty-five percent of the amounts in the Agriculture Pima Trust shall be paid to yarn spinners of pima cotton that produce ring spun cotton yarns in the U.S. during the calendar year immediately preceding the payment, to be allocated to each yarn spinner in an amount that bears the same ratio as:

(1) The yarn spinner's production of ring spun cotton yarns measuring less than 83.33 decitex (exceeding 120 metric number) from pima cotton in single and plied form during the prior calendar year; bears to

(2) The production of the yarns described in paragraph (b)(1) of this section during the prior calendar year by all yarn spinners that qualify under this paragraph (b).

(3) A yarn spinner will not receive an amount under this paragraph (b) that exceeds the cost of pima cotton that was:

(i) Purchased during the prior calendar year; and

(ii) Used in spinning any cotton yarns.

(4) The Secretary will reallocate any amounts reduced by reason of the limitation under paragraph (b)(3) of this section to spinners using the ratio described in this paragraph (b), disregarding production of any spinner subject to that limitation.

(c) Fifty percent of the amounts in the Agriculture Pima Trust shall be paid to manufacturers that certify, pursuant to the affidavit under § 1471.4, that, during the calendar year immediately preceding the payment, they used imported cotton fabric to produce men's and boys' shirts, to be allocated to each manufacturer in an amount that bears the same ratio as:

(1) The dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during the prior calendar year to produce men's and boys' shirts; bears to

(2) The dollar value (excluding duty, shipping, and related costs) of the fabric described in paragraph (c)(1) of this section purchased during the prior calendar year by all manufacturers that qualify under this paragraph (c).

§ 1471.3 Affidavit of producers of ring spun pima cotton yarn.

In addition to any applicable information requirements in § 1471.1, a producer of ring spun cotton yarn must annually provide an affidavit that affirms:

(a) During the calendar year immediately preceding the payment, the yarn spinner used pima cotton to produce ring spun cotton yarns in the U.S. measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form;

(b) In the prior calendar year, the yarn spinner actually produced the quantity, measured in pounds, of ring spun cotton yarns measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form, reported on the affidavit;

(c) The yarn spinner maintains supporting documentation about such production during the prior calendar year that shows the actual quantity of such yarns produced, and evidencing the yarns as ring spun pima cotton yarns measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form; and

(d) The dollar amount of pima cotton purchased during the prior calendar year that was used in spinning any cotton yarns, and for which the producer maintains supporting documentation.

§ 1471.4 Affidavit of manufacturers of cotton shirts.

(a) *Definition of qualifying fabric.* In this section, the term ''qualifying fabric'' means imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp.

(b) *In general.* In addition to any applicable information requirements in §1471.1, a producer of men's and boys' cotton shirts must annually provide an affidavit that affirms:

(1) During the calendar year immediately preceding the payment, the manufacturer used qualifying fabric to cut and sew men's and boys' cotton shirts in the U.S. and the manufacturer has maintained production records evidencing the dollar value of qualifying fabric used to cut and sew men's and boys' cotton shirts;

(2) The dollar value of qualifying fabric purchased by the manufacturer during the calendar year immediately preceding the payment, except that the dollar value of fabric reported shall not exceed the dollar value of qualifying fabric used by the manufacturer to cut and sew men's and boys' woven cotton shirts in the U.S. during the calendar year immediately preceding the payment, as supported by production records maintained under paragraph (b)(1) of this section;

(3) The manufacturer maintains invoices and other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of qualifying fabric purchased, the date of purchase, and evidencing the fabric as qualifying fabric; and

(4) The imported cotton fabric purchased in the calendar year immediately preceding the payment was suitable for use in the manufacturing of men's and boys' cotton shirts.

(c) *Date of purchase.* For purposes of the affidavit under paragraph (b) of this section, the date of purchase shall be the invoice date.

(d) *Dollar value of purchase.* For purposes of the affidavit under paragraph (b) of this section, the dollar value shall be determined excluding duty, shipping, and related costs.

(e) *Fabric use.* For purposes of the affidavit under paragraph (b) of this section, and in specific reference to paragraph (b)(2) of this section, a manufacturer shall not report a dollar value of qualifying fabric purchased that is more than the dollar value of qualifying fabric that it used to cut and sew men's and boys' shirts during the calendar year immediately preceding the payment. The value of qualifying fabric purchased for any other purpose, including fabric held in inventory or destined for resale or other use, is not eligible for payment under the Agriculture Pima Trust and shall not be included by the manufacturer in the amount reported under paragraph (b)(2) of this section.

§ 1471.5 Affidavit of pima cotton trade associations.

In addition to any applicable information requirements in §1471.1, trade associations filing a claim for a payment under the Agriculture Pima Trust must provide a statement that states that during the calendar year immediately preceding the payment they were, as determined by the Secretary, a domestic nationally recognized association established and operating for the promotion of pima cotton

for domestic use in textile and apparel goods.

Subpart B—Agriculture Wool Trust

§ 1471.10 Provisions common to this subpart.

(a) *Agriculture Wool Trust*—(1) *Establishment*. The Agriculture Wool Trust has been established to provide funding for payments under this subpart.

(2) *Purpose*. The purpose of the Agriculture Wool Trust is to reduce the injury to domestic manufacturers resulting from tariffs on wool fabric that are higher than tariffs on certain apparel articles made of wool fabric.

(3) *Funding availability*. Not more than $30,000,000 will be available annually for payments authorized under this subpart.

(4) *Definitions*. As used in this subpart:

Agriculture Wool Trust means the Agriculture Wool Apparel Manufacturers Trust Fund.

CCC means the Commodity Credit Corporation.

FAS means the Foreign Agricultural Service.

HTS means the Harmonized Tariff Schedule of the United States.

Secretary means the Secretary of Agriculture.

TRQ means Tariff Rate Quota.

U.S. means the United States of America.

(b) *Provisions common to this subpart*—(1) *Affidavits*. FAS shall annually, not later than February 15 of the year of the applicable payment, make affidavits available on the FAS website. Affidavits must be submitted in accordance with the instructions provided on the FAS website.

(2) *Filing deadline*. Any person filing an affidavit under this subpart for a particular year must file the affidavit not later than March 1 of such year.

(3) *Affirmation*. By submitting an affidavit under this subpart, an applicant is affirming that all information contained in the application is complete and correct and that the information does not contain a false claim, statement, or representation.

(4) *Document retention*. All persons receiving a payment under this subpart must maintain all pertinent documentation for three years after the year of receipt of the payment.

(5) *False statements*. Persons providing false or fraudulent claims or making materially false statements or representations are subject to civil or criminal penalties pursuant to 18 U.S.C. 1001.

(6) *Confidential information*. Specific business information provided in affidavits that is marked ''business confidential'' will be protected from disclosure to the full extent permitted by law.

(7) *Review of affidavits*. Affidavits will be reviewed to determine whether they are complete and responsive to the content and form of affidavit requirements in this subpart.

(8) *Finality of determination by the Secretary*. A determination by the Secretary about a payment under this subpart shall be final and is not subject to appeal or protest.

(9) *Timing of payments*. A payment for which a person is eligible under this subpart will be disbursed not later than April 15 of the applicable year.

(10) *Proration and sequester*. Payments covered by this subpart will be subject to proration in the event that insufficient funds exist in the Agriculture Wool Trust during the year of the payment, and will be subject to sequester, if required by law.

(11) *HTS subheadings*. All references to subheadings of the HTS in this subpart are to the subheadings as described in the HTS in 2014.

§ 1471.11 Payments to manufacturers of certain worsted wool fabrics.

(a) *Definitions*. In this section the following definitions apply:

Eligible person means a manufacturer in the U.S. of qualifying worsted wool fabric during the calendar year immediately preceding the payment and during each of calendar years 1999, 2000, and 2001.

Qualifying worsted wool fabric means a worsted wool fabric containing at least 85% by weight worsted wool of the kind described in subheading 9902.51.11 or 9902.51.15 of the 2014 HTS that, during the calendar year immediately preceding the payment and during each of calendar years 1999, 2000, and 2001, was

manufactured by an eligible person in the United States.

(b) *Distribution of funds.* From amounts in the Agriculture Wool Trust, CCC will annually make payments to eligible persons that manufactured qualifying worsted wool fabric as provided in paragraph (b)(1) or (2) of this section.

(1) *Payments for production under subheading 9902.51.11 of the HTS.* A total of $2,666,000 will be allocated annually among eligible persons covered by this paragraph (b)(1) on the basis of the percentage of each eligible person's total production (actual production, not estimates) of qualifying worsted wool fabric that is of the kind described in subheading 9902.51.11 of the HTS for each of the calendar years 1999, 2000, and 2001 in relation to the total production of such fabric by all eligible persons who qualify for payments under this paragraph (b)(1) for each of the calendar years 1999, 2000, and 2001.

(2) *Payments for production under subheading 9902.51.15.* A total of $2,666,000 will be allocated annually among eligible persons covered by this paragraph (b)(2) on the basis of the percentage of each eligible person's total production (actual production, not estimates) of qualifying worsted wool fabric that conforms in composition to subheading 9902.51.15 of the HTS for each of the calendar years 1999, 2000, and 2001 in relation to the total production of such fabric by all eligible persons who qualify for payments under this paragraph (b)(2) for each of the calendar years 1999, 2000, and 2001.

(c) *Annual affidavit*—(1) *In general.* An eligible person applying for a payment under this section shall comply with all applicable reporting requirements of this section and of §1471.10.

(2) *Specific business information.* An eligible person shall annually report the actual dollar value and the actual quantity (linear yards) of qualifying worsted wool fabric that was manufactured in the calendar year immediately preceding the payment and for each of calendar years 1999, 2000, and 2001.

(3) *Manufacturing of wool.* When reporting the annual dollar value and quantity of the qualifying wool fabric that was manufactured, an eligible person may either have manufactured the qualifying worsted wool on its own behalf or had another person manufacture the qualifying worsted wool fabric, provided the eligible person owned the qualifying worsted wool fabric at the time of manufacture.

§ 1471.12 Refund of duties paid on imports of certain wool products.

(a) *Eligible wool.* Eligible wool under the Duty Refund program means imported wool yarn of the kind described in section 505 of the Trade and Development Act of 2000 Public Law 106–200 (May 18, 2000).

(b) *Payments*—(1) *Eligibility.* Persons eligible for a Duty Refund payment are manufacturers who, in the year immediately preceding the payment, were actively engaged in manufacturing wool (as determined by FAS), and in calendar years 2000, 2001, and 2002—

(i) Imported eligible wool directly or indirectly; and

(ii) Used the imported wool to make men's or boy's suits; or

(iii) Further manufactured the eligible imported wool.

(2) *Payment amount.* Persons eligible for a Duty Refund payment shall be paid the same amounts that were made to the persons by U.S. Customs and Border Protection (CBP) in 2005.

§ 1471.13 Monetization of the wool tariff rate quota.

(a) *Definitions.* In this section the following definitions apply:

(1) *Lower duty rate.* The term ''lower duty rate'' means the duty rate as codified in the 2014 HTS that would have been applicable to qualifying worsted wool fabric of the kind described in subheadings 9902.51.11, 9902.51.15, and 9902.51.16 of the 2014 HTS prior to the expiration of the Wool TRQ on December 31, 2014.

(2) *Eligible person.* The term ''eligible person'' means a manufacturer (or a successor-in-interest to the manufacturer) in the U.S. or in a Foreign Trade Zone authorized under the Foreign-Trade Zones Act of 1934 (19 U.S.C. 81a–81u) that, during the calendar year immediately preceding the payment, imported qualifying worsted wool fabric and used the imported qualifying worsted wool fabric as described in paragraph (a)(3) of this section.

(3) *Qualifying worsted wool fabric.* The term ''qualifying worsted wool fabric'' means imported worsted wool fabric containing at least 85% by weight worsted wool of the kind described in subheading 9902.51.11, 9902.51.15, or 9902.51.16 of the 2014 HTS that, during the calendar year immediately preceding the payment was:

(i) Imported by an eligible person in the U.S.; and

(ii) Used by the eligible person in the U.S.

(A) In the case of wool fabric of the kind described in subheading 9902.51.11 or 9902.51.15 of the HTS, the qualifying fabric shall be used to produce worsted wool suits, suit-type jackets, or trousers for men and boys; or

(B) In the case of wool fabric of the kind described in subheading 9902.51.16 of the HTS, the qualifying fabric shall be used in manufacturing.

(4) *Successor-in-interest.* The term ''successor-in-interest'' means a person that is eligible to claim a payment under this section as if the person were the original eligible person, without regard to section 3727, title 31, United States Code. A person may succeed to the status of the successor-in-interest to the eligible person and become eligible for the payment because of—

(i) An assignment of the claim;

(ii) An assignment of the original eligible person's right to manufacture under the same trade name; or

(iii) A reorganization of the eligible person.

(b) *Purposes.* The purposes of a TRQ monetization payment are to provide an eligible person—

(1) Compensation for termination of the TRQ for qualifying worsted wool fabric; and

(2) A payment that is equivalent to the amount the eligible person would have saved during the calendar year immediately preceding the payment for imports of qualifying worsted wool fabric if the lower duty rate under the applicable 2014 HTS subheading(s) of a qualifying worsted wool fabric were in effect.

(c) *Calculation of monetized TRQ payment.* A payment will be established by calculating the savings that would have been realized by the eligible person for imports of qualifying worsted wool fabric had the lower duty rate been in effect by—

(1) Establishing the reported dollar value of imported worsted wool fabric, for each of the 2014 HTS subheadings of worsted wool fabric, during the calendar year immediately preceding the payment;

(2) Subtracting the duty rate (converted to numeric value) for each applicable 2014 HTS subheading of worsted wool fabric that would have been paid in calendar year 2014 from the duty rate (converted to numeric value) that was actually paid in the calendar year immediately preceding the payment;

(3) For each applicable 2014 HTS subheading of worsted wool fabric, multiplying the numeric values described in paragraphs (c)(1) and (2) of this section; and

(4) Adding each product obtained in paragraph (c)(3) of this section.

(d) *Annual affidavit*—(1) *In general.* An eligible person applying for a payment under this section shall comply with all applicable reporting requirements of this section and of § 1471.10.

(2) *Specific business information*—(i) *Imports and production.* An eligible person shall, for the entire calendar year immediately preceding the payment, report the actual dollar value and the actual quantity (square meters) of their imports into the U.S. of qualifying worsted wool fabric and the amount of qualifying worsted wool fabric used by the eligible person in the U.S.

(ii) *Direct and indirect importers.* Eligible persons that directly import qualifying worsted wool fabric and pay the import duty for such wool are considered to be direct importers of the qualifying worsted wool fabric. Persons that import qualifying worsted wool fabric through a third party broker are considered to be indirect importers of the qualifying worsted wool fabric. Eligible persons must state in their annual affidavit whether, in the calendar year immediately preceding the payment, they were direct or indirect importers, and the dollar value of the imported qualifying worsted wool fabric. The reported dollar value of such imports by indirect importers will be subject to a 10% reduction.

(iii) *Import documentation.* Eligible persons must maintain supporting documentation for the amounts reported on their affidavits and shall provide copies of such supporting documentation upon the request of FAS.

(3) *Production of garments or manufacturing of qualifying worsted wool fabric*—(i) *Production of garments.* When reporting the annual dollar value and quantity of imported qualifying worsted wool fabric of the kind described in subheadings 9902.51.11 and 9902.51.15 of the 2014 HTS, an eligible person may either have cut and sewn the wool on its own behalf or had another person cut and sew the wool on behalf of the eligible person, provided the eligible person owned the wool at the time it was cut and sewn.

(ii) *Manufacturing of qualifying worsted wool fabric.* When reporting the annual dollar value and quantity of imported qualifying worsted wool fabric of the kind described in subheading 9902.51.16 of the 2014 HTS, an eligible person may either have manufactured the wool on its own behalf or had another person manufacture the wool on behalf of the eligible person, provided the eligible person owned the wool at the time of manufacture.

§ 1471.14 Wool yarn, wool fiber, and wool top duty compensation payment.

(a) *Definitions.* In this section the following definitions apply:

(1) *Duty.* The term ''duty'' means the duty rate codified in the HTS for a year that is applicable to qualifying wool of the kind described in subheadings 9902.51.13 and 9902.51.14 of the 2014 HTS.

(2) *Eligible person.* The term ''eligible person'' means a manufacturer (or a successor-in-interest to the manufacturer) in the U.S. or in a Foreign Trade Zone authorized under the Foreign-Trade Zones Act of 1934 (19 U.S.C. 81a–81u) that, during the calendar year immediately preceding the payment, imported qualifying wool and manufactured the qualifying wool directly or had another person manufacture the qualifying wool, providing the eligible person owned the qualifying wool at the time it was manufactured.

(3) *Qualifying wool.* The term ''qualifying wool'' means imported wool yarn of the kind described in subheading 9902.51.13 of the 2014 HTS or imported wool fiber or wool top of the kind described in subheading 9902.51.14 of the 2014 HTS, that, during the calendar year immediately preceding the payment, was imported, either directly or indirectly, by an eligible person (or a successor-in-interest) into the U.S. and manufactured by the eligible person in the U.S.

(4) *Successor-in-interest.* The term ''successor-in-interest'' means a person that is eligible to claim a payment under this section as if the person were the original eligible manufacturer, without regard to section 3727, title 31, United States Code. A person may succeed to the status of the successor-in-interest to the eligible person and become eligible for the payment because of—

(i) An assignment of the claim;

(ii) An assignment of the eligible person's right to manufacture under the same trade name; or

(iii) A reorganization of the eligible person.

(b) *Import duties.* The duties on imports of qualifying wool were suspended in their entirety in section 503 of the Trade and Development Act of 2000. The suspension of the duties for both HTS subheadings of qualifying wool was extended through December 31, 2014. These duties were reinstated as of January 1, 2015.

(c) *Duty compensation payment*—(1) *Calculation of payment.* The duty compensation payment of an eligible person will be established by calculating, as provided in paragraphs (c)(2) through (4) of this section, the savings that would have been realized by the eligible person for imports of qualifying wool had the duty suspension been in effect.

(2) *Savings for each subheading.* The savings realized by an eligible person for imports of qualifying wool under a HTS subheading covered by this section shall be obtained by multiplying:

(i) The reported dollar value of imports under a HTS subheading during the calendar year immediately preceding the payment; and

(ii) The duty applicable to that HTS subheading in the calendar year preceding the payment, converted to numeric value.

(3) *Sum of subheading savings.* The product obtained in paragraph (c)(2) of this section for imports of qualifying wool previously described under each HTS subheading shall be added to the savings obtained for imports under the other HTS subheading (as applicable).

(4) *Duty compensation payment amount.* The sum obtained in paragraph (c)(3) of this section shall equal the annual duty compensation payment for the eligible person for the applicable calendar year.

(d) *Annual affidavit required*—(1) *In general.* An eligible person applying for a payment under this section shall comply with all applicable reporting requirements described in this section and § 1471.10.

(2) *Specific business information*—(i) *Imports and production.* An eligible person shall, for the calendar year immediately preceding the payment, report the actual dollar value and the actual quantity of:

(A) Imports into the U.S. of qualifying wool by the eligible person; and

(B) Such qualifying wool that was manufactured in the U.S. by the eligible person.

(ii) *Direct and indirect importers*—(A) *In general.* Eligible persons that import qualifying wool through a third party broker are considered to be indirect importers of the qualifying wool. Persons that directly import qualifying wool and pay the import duty for such wool are considered to be direct importers of the qualifying wool.

(B) *Reported dollar value.* Eligible persons must state in their annual affidavit whether, in the calendar year immediately preceding the payment, they were direct or indirect importers, and the dollar value of the imported qualifying wool. The reported dollar value of imports by indirect importers will be subject to a 10% reduction.

(C) *Affirmation.* An eligible person shall annually affirm in the affidavit that, in the calendar year immediately preceding the payment, the eligible person:

(*1*) Directly or indirectly imported the qualifying wool into the U.S.;

(*2*) Manufactured the qualifying wool in the U.S.; and

(*3*) Imported qualifying wool from the country of origin identified in the affidavit.

(iii) *Import documentation.* Eligible persons must maintain supporting documentation for the amounts reported on their affidavits and shall provide copies of such supporting documentation upon the request of FAS.

(3) *Manufacture of qualifying wool.* When reporting the annual dollar value and quantity of imported qualifying wool, and the annual dollar value and quantity of the qualifying wool that was manufactured, an eligible person may either have manufactured the qualifying wool on its own behalf or had another person manufacture the qualifying wool, provided the eligible person owned the qualifying wool at the time of manufacture.

SUBCHAPTER C—EXPORT PROGRAMS

PART 1484—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

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Subpart A—General Information

§ 1484.10 General purpose and scope.

(a) This part sets forth the general terms and conditions governing the Commodity Credit Corporation's (CCC) operation of the Foreign Market Development (FMD) Cooperator program.

(b)(1) The Office of Management and Budget (OMB) issued guidance on ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this subpart, applies to the Cooperator program.

(3) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the Cooperator program, to the extent that these regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the Cooperator program.

(c) Under the Cooperator program, CCC enters into agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, maintain,

or expand foreign markets for U.S. agricultural commodities. When considering eligible nonprofit U.S. trade organizations, CCC generally gives priority to organizations that are nationwide in membership and scope and have the broadest producer representation and affiliated industry participation of the commodity being promoted. Agreements involve the promotion of agricultural commodities on a generic basis. CCC does not provide brand promotion assistance to Cooperators under this program. Agreements may not involve activities targeted directly toward consumers purchasing as individuals. Activities must contribute to the creation, maintenance, or growth of demand for U.S. agricultural commodities and must generally address long–term foreign import constraints and export growth opportunities by focusing on matters such as reducing infrastructural or historical market impediments, improving processing capabilities, modifying codes and standards, and identifying new markets or new applications or uses for the agricultural commodity in the foreign market.

(d) The Cooperator program generally operates on a reimbursement basis.

(e) CCC policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage or sole benefit from program activities. CCC also endeavors to enter into Cooperator agreements covering a broad array of agricultural commodity sectors. The Cooperator program is administered by the Foreign Agricultural Service (FAS) on behalf of CCC.

(f) The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0026 for this information collection.

§ 1484.11 Definitions.

For purposes of this part the following definitions apply:

Activity means a specific foreign market development effort undertaken by a Cooperator to address a constraint or opportunity.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a Cooperator. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: Rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, and business cards);

(2) Personnel (including, but not limited to: Salaries, benefits, payroll taxes, individual insurance, and training);

(3) Communications (including, but not limited to: Phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, and walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to: Planning, supervision, supervisory travel, teambuilding, recruiting, and hiring);

(5) Utilities (including, but not limited to: Sewer, water, and energy); and

(6) Professional services (including, but not limited to: Accounting expenses, financial services, and investigatory services).

Affiliate means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund.

Agreement means a document entered into between CCC and a Cooperator setting forth the terms and conditions of approved activities under the Cooperator program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its FMD application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement. This letter requires a countersignature by the Cooperator before it becomes effective.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Constraint means a condition in a particular country or region that needs

to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Consumer promotion means activities that are designed to directly influence consumers by changing attitudes or purchasing behaviors towards eligible commodities and that involve activities targeted directly toward consumers purchasing as individuals.

Cooperator means a nonprofit U.S. agricultural trade organization that has entered into a foreign market development agreement with CCC.

Cooperator program means the Foreign Market Development Cooperator program.

Contribution means the funds, *e.g.*, money, personnel, materials, services, facilities, or supplies, provided by an FMD Cooperator, State agency, or entities in the FMD Cooperator's industry (''U.S. industry'') in support of an approved activity as well as funds provided by the FMD Cooperator, U.S. industry, or State agency in support of related promotion activities in the markets covered by the FMD Cooperator's agreement.

Credit memo means a commercial document, also known as a credit memorandum, issued by the Cooperator to a commercial entity that owes the Cooperator a certain sum. A credit memo is used when the Cooperator owes the commercial entity a sum less than the amount the entity owes the Cooperator. The credit memo reflects an offset of the amount the Cooperator owes the entity against the amount the entity owes to the Cooperator.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

Foreign subrecipient means a foreign entity that a Cooperator works with, in accordance with this part, to promote the export of an eligible commodity under the Cooperator program.

Generic promotion means a promotion that does not involve the exclusive or predominant use of a single company name, logo, or brand name, or the brand of a U.S. agricultural cooperative, but rather promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.*, a brand owned primarily by foreign interests and being used to market an agricultural commodity in a foreign market), if the foreign brand uses the promoted eligible commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the Cooperator must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.*, a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

Market means a country or region targeted by an activity.

Notification means a document from the Cooperator by which the Cooperator proposes to CCC changes to the activities and/or funding levels in an approved agreement and/or approval letter.

Project funds means the funds made available to a Cooperator under an agreement and authorized for expenditure in accordance with this part.

Program notice means documents that CCC issues for informational purposes. These notices are currently made available electronically through the FAS website. These notices have no legal effect. They are intended to alert Cooperators of various aspects of CCC's current administration of the FMD program. For example, CCC issues notices to alert Cooperators of applicable Federal pay scale rates and lists of economic and trade sanctions against certain foreign countries.

Program year means, unless otherwise agreed to in writing between CCC and a Cooperator, a 12-month period during which a Cooperator can undertake activities consistent with this part and its agreement and approval letter with CCC. This is also known as a project period, which in multiple year awards will be divided into budget periods.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

Unified Export Strategy (UES) means a holistic marketing plan that outlines an applicant's proposed foreign market development activities and requested funding under each of the FAS market development programs.

Unified Export Strategy (UES) system means an online internet system maintained by FAS through which applicants may apply to the Cooperator program and other FAS market development programs. The system is currently accessible at *https://apps.fas.usda.gov/ues/webapp/*. FAS may prescribe a different system through which applicants may apply to the FMD program and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

§ 1484.12 Participation eligibility.

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization that promotes the exports of one or more U.S. agricultural commodities, does not have a business interest in or receive remuneration from specific sales of agricultural commodities, and contributes at least 50 percent of the value of resources reimbursed by CCC for activities conducted under the agreement.

(b) CCC may require that an agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, CCC will take into account such factors as past Cooperator contribution level, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution level.

(c) CCC will enter into agreements only for the promotion of eligible commodities.

Subpart B—Application and Funding Allocation

§ 1484.20 Application process.

(a) *General application requirements.* CCC will periodically announce through a NOFO that it is accepting applications for participation in the Cooperator program for a specified program year. This announcement will be posted on the U.S. Government website for grant opportunities. Applications shall be submitted in accordance with the terms and requirements specified in the announcement and in this part. Currently, applicants are encouraged to submit applications through the UES system but are not required to do so.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the Cooperator program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the Cooperator program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive Cooperator program funding.

§ 1484.21 Application review and formation of agreements.

(a) *General.* CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for creating, maintaining, or expanding export markets for U.S. agricultural commodities. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. When considering eligible nonprofit U.S. trade organizations, CCC may weigh which organizations have the broadest producer representation and affiliated industry participation of the commodity being promoted. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(b) *Approval review criteria.* CCC follows results–oriented management principles and considers the following criteria when assessing the likelihood of success of the applications it receives, determining which applications to recommend for approval, and developing preliminary recommended funding levels:

(1) Strategic planning (25%);

(2) Program implementation (25%); and

(3) Program results and evaluation (50%).

§ 1484.22 Allocation factors.

CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's Cooperator program announcement. Generally, extensions will not be allowable.

Subpart C—Program Operations

§ 1484.30 Approval decision.

CCC will notify each applicant in writing of the final disposition of its application. CCC will send an agreement, an approval letter, and a signature card to each approved applicant. The agreement and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution and program evaluations. An applicant that decides to accept the terms and conditions contained in the agreement and approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the agreement and approval letter and submit them to CCC. Final agreement shall occur when the agreement and approval letter are signed by both parties. The agreement, the approval letter, and this part shall establish the terms and conditions of a Cooperator agreement between CCC and the approved applicant. CCC will provide each Cooperator with IDs and passwords for the UES, as necessary. Cooperators shall protect these IDs and passwords in accordance with USDA's information technology policies. Cooperators shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

§ 1484.31 Signature cards.

The Cooperator shall designate at least two individuals in its organization to sign agreements and amendments, approval letters, reimbursement claims, and advance requests. The Cooperator shall submit the signature card signed by those designated

individuals and by the Cooperator's CEO to CCC prior to the start of the program year. The Cooperator shall immediately notify CCC of any changes in signatories (*e.g.*, removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

§ 1484.32 Employment practices.

(a) A Cooperator shall enter into written contracts with all overseas employees who are paid in whole or in part with project funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators should consult local laws regarding currency restrictions.

§ 1484.33 Financial management.

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles and complies with the standards in 2 CFR part 200.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with this part.

(c) Each Cooperator shall retain all records relating to program activities for three calendar years from the date of submission of the final financial report and permit authorized officials of the U.S. Government to have full and complete access, for such three–year period, to such records.

(d) A Cooperator shall also maintain all documents related to employment of any employees whose salaries are reimbursed in whole or in part with project funds, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors, whether such employees or contractors are based in the United States or overseas.

(e) A Cooperator shall also maintain adequate documentation related to the proper disposition of all personal property having a useful life of over one year and an acquisition cost of $500 or more purchased by the Cooperator and for which the Cooperator is reimbursed, in whole or in part, with project funds.

(f) A Cooperator shall maintain its records of expenditures and contribution in a manner that allows it to provide information by program year, country or region, activity number, and cost category (as applicable). Such records shall include copies of:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Receipts for any other program–related expenditure in excess of a minimum level that CCC shall determine and announce in writing to all Cooperators via a program notice issued on the FAS website. Receipts for all actual meal and incidental expenses (M&IE) reimbursements must be maintained, regardless of the amount;

(3) The exchange rate used to calculate the dollar equivalent of each expenditure made in a foreign currency and the basis for such calculation;

(4) Reimbursement claims;

(5) An itemized list of claims charged to the Cooperator's FMD account;

(6) Documentation, with accompanying English translation, supporting each reimbursement claim, including evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts, purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7)(i) Each Cooperator must keep records documenting all claimed contribution, to include:

(A) Copies of invoices or receipts for expenses paid by the U.S. industry or State agency and not reimbursed by the Cooperator for the joint activity; or

(B) If invoices are not available, an itemized statement from the U.S. industry or State agency as to what costs it incurred; or

(C) If neither of the foregoing is available, a statement from the U.S. industry or State agency as to what goods and services it provided; or

(D) If none of the foregoing are available, a memo to the files of the Cooperator's estimate of what contribution was made by the U.S. industry or State agency, item by item, and the method used to assign a value to each.

(ii) Documentation supporting contribution must include the date(s), purpose, and location(s) of each activity for which cash or in–kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contribution. Cooperators must retain and make available for compliance reviews and audits documentation related to claimed contribution.

(g) Upon request, a Cooperator shall provide to CCC copies of the documents that support the Cooperator's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1484.34 Ethical conduct.

(a) A Cooperator shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Cooperator shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(b) Neither a Cooperator nor its affiliates shall make export sales of eligible commodities covered under the terms of an agreement. Neither a Cooperator nor its affiliates shall charge a fee for facilitating an export sale. A Cooperator may collect check–off funds and membership fees that are required for membership in the Cooperator's organization.

(c) The Cooperator shall not use program activities or project funds to promote private self–interests or conduct private business, except as members of trade teams.

(d) A Cooperator shall not limit participation in its FMD activities to members of its organization. Cooperators shall ensure that their FMD–funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non–merit factors.

(e) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a Cooperator shall submit such selection criteria to CCC for approval.

(f) All Cooperators should endeavor to ensure fair and accurate fact–based advertising. Deceptive or misleading promotions may result in cancellation or termination of an agreement and recovery of CCC funds related to such promotions from the Cooperator.

(g) The Cooperator must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Cooperator's U.S. office shall report such actions or circumstances in writing to CCC.

§ 1484.35 Contracting procedures.

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. Neither CCC nor any other agency of the United States Government nor any official or employee of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the greatest extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for professional and technical services paid in any part with project funds must be covered by written contracts.

(d) A Cooperator shall:

(1) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated in this paragraph (d)(1) participates in the

review, selection, award, or administration of a contract in which such entities or their affiliates have a financial or other interest;

(2) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement;

(3) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;

(4) Perform and document some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices for procurements in excess of the simplified acquisition threshold in 2 CFR 200.88; and

(5) Document the decision–making process.

§ 1484.36 Property.

(a) A Cooperator shall maintain an inventory of all personal property having a useful life of more than one year and an acquisition cost of $500 or more that was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements, as applicable.

(b) The Cooperator shall insure all real property and equipment that was acquired, in whole or in part, with project funds at a level minimally equal to the equivalent insurance coverage for property owned by the Cooperator. The Cooperator shall safeguard such property and equipment against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property and equipment to the insurance company.

(c) Personal property having a useful life of more than one year and an acquisition cost of $500 or more purchased by the Cooperator, and for which the Cooperator is reimbursed, in whole or in part, with project funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With CCC approval, transfer the property to other Cooperators for their activities, or to a foreign subrecipient; or

(3) Upon Attaché/Counselor approval, donate the property to a local charity, or convey the property to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(d) The Cooperator is responsible for reimbursing CCC for the value of any uninsured property at the time of the loss or theft of the property.

§ 1484.37 Federal Travel Regulations.

Except as otherwise provided in this part, travel funded by the Cooperator program shall conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304) and 2 CFR part 200, and FMD–funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The Cooperator shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

§ 1484.38 Program income.

Program income is gross income earned by the non–Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any income generated from

an activity, the expenditures for which have been wholly or partially reimbursed with FMD funds, shall be used by the FMD Cooperator in furtherance of its approved FMD activities in the program year during which the FMD funds are available for obligation by the FMD Cooperator, or must be returned to CCC. The use of such income shall be governed by this subpart. Interest earned on funds advanced by CCC is not program income. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for approved activities. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to FAS. Such fees may not be used as profit or counted as contribution.

§ 1484.39 Changes to activities and funding.

(a) *Adding a new activity.* (1) A Cooperator may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the Cooperator shall submit a notification to CCC.

(2) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification for the transfer of funds.

(3) After receipt of the notification, CCC will inform the Cooperator via the UES system whether the requested budget is approved.

(b) *Modifying existing activities and their funding levels.* (1) A Cooperator desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(2) A Cooperator may make significant adjustments below the threshold in paragraph (b)(1) of this section to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 calendar days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(3) Notifications shall describe the activity and any changes to the activity, the existing funding level, or the proposed funding level and shall include a justification for the transfer of funds, if applicable.

Subpart D—Contribution and Reimbursements

§ 1484.50 Contribution rules.

(a) A Cooperator must use its own funds and may not use FMD program funds to pay any administrative costs of the Cooperator's U.S. office(s), including legal fees, except as set forth in this subpart. Where the Cooperator uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contribution the Cooperator contributes to its FMD program. The contribution amount will be reflected in the award budget.

(b) In calculating the amount of contribution that it will make and the contribution that a U.S. industry or a State or local agency will make, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

(1) Expenditures are necessary and reasonable for accomplishment of the Cooperator's overall foreign market development program;

(2) Expenditures are not included as cost share for any other Federal award;

(3) Expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(4) The contribution is made during the period covered by the agreement.

(c) Subject to paragraph (b) of this section, as well as the cost principles in 2 CFR part 200, to the extent these principles do not directly conflict with the provisions of this part, the following are eligible contribution:

(1) Cash;

(2) Compensation paid to personnel;

(3) The cost of acquiring materials, supplies, or services;

(4) The cost of office space, including legal fees;

(5) A reasonable and justifiable proportion of general administrative costs and overhead;

(6) Payments for indemnity and fidelity bond expenses;

(7) The cost of business cards that target a foreign audience;

(8) Fees for office parking;

(9) The cost of subscriptions to publications that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the Cooperator's program;

(10) The cost of activities conducted overseas;

(11) Credit card fees;

(12) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with agreement or regulatory requirements;

(13) The cost of giveaways, awards, prizes, and gifts;

(14) The cost of product samples;

(15) Fees for participating in U.S. Government sponsored or endorsed export promotion activities;

(16) The cost of air and local travel in the United States related to a foreign market development effort;

(17) Transportation and shipping costs;

(18) The cost of displays and promotional materials;

(19) Advertising costs;

(20) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(21) The costs associated with trade shows, seminars, and STRE conducted in the United States, and costs associated with entertainment conducted in the United States where such entertainment costs have a programmatic purpose and are authorized in the agreement and/or approval letter or are authorized by prior written approval of CCC;

(22) Product research that is undertaken to benefit an industry and has a specific export application;

(23) Consumer promotions; and

(24) The cost of any activity expressly listed as reimbursable in this part.

§ 1484.51 Ineligible contribution.

(a) The following are not eligible contribution:

(1) Any portion of salary or compensation of an individual who is the target of a promotional activity;

(2) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Cooperator's organization;

(3) Any land costs other than allowable costs for office space;

(4) The cost of refreshments and related equipment provided to office staff;

(5) The cost of insuring articles owned by private individuals;

(6) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(7) The cost of product development or product modifications;

(8) Slotting fees or similar sales expenditures;

(9) Funds, services, capital goods, or personnel provided by any U.S. Government agency;

(10) The value of any services generated by a Cooperator or third party that involve no expenditure by the Cooperator or third party, *e.g.*, free publicity;

(11) Membership fees in clubs and social organizations; and

(12) Any expenditure for an activity prior to CCC's approval of that activity.

(b) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the Cooperator as eligible contribution.

§ 1484.52 Reimbursement rules.

(a) A Cooperator may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

(2) The Cooperator has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section and §1484.53, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, including in print, electronic media, billboards, or posters. Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and similar point of sale materials;

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of product samples (but not the purchase of the product samples);

(5) Temporary displays and rental of space for temporary displays;

(6) Subject to paragraph (b)(7) of this section, non–travel expenditures, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials, associated with retail and trade exhibits and shows, whether held outside or inside the United States. However, non–travel expenditures associated with retail and trade exhibits and shows held inside the United States are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(7) Where USDA has sponsored or endorsed a U.S. pavilion at a retail or trade exhibit or show, whether held outside or inside the United States, project funds may be used to reimburse the travel and/or non-travel expenditures of only those Cooperators located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this paragraph (b)(7), on a case by case basis, where the trade show is segregated into product pavilions, a company's distributor or importer is located outside the U.S. pavilion, or when a company can demonstrate that there is a benefit to being located outside the U.S. pavilion. Such waiver will be provided to the Cooperator in writing;

(8) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States, including space rental, equipment rental, and duplication of seminar materials;

(9) Production and distribution of publications;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to Cooperators via a program notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the target audience purchasing a good or service to receive the promotional item;

(12) Compensation and allowances for housing, educational tuition, and cost

of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, provided such benefits are granted under established written policies, subject to the limitation that CCC shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(13) Foreign transfer, temporary lodging, and post hardship differential allowances for U.S. citizen employees, provided such benefits are granted under established written policies;

(14) Approved salaries or compensation for non–U.S. citizen employees and non–U.S. contractors stationed overseas. Generally, CCC will not reimburse any portion of a non–U.S. citizen employee's compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non–U.S. citizen in accordance with the annual program announcement;

(15) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross GS–15, Step 10 salary for U.S. Government employees in effect on the date the fee is earned, unless a bidding process revels that such a contractor is not available at or below that salary rate;

(16) A retroactive salary adjustment for non–U.S. citizen staff employees or non–U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(17) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(18) Overtime paid to clerical staff of approved FMD–funded overseas offices;

(19) Fees for professional and consultant services;

(20) Subject to paragraph (b)(7) of this section, international travel expenditures, including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), except that if the activity is participation in a retail or trade exhibit or show held inside the United States, international travel expenditures are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Cooperator has not participated in within the last three calendar years using funds from a source other than FMD. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are: A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products, and an international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(i) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the Cooperator shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the Cooperator shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim;

(ii) In very limited circumstances, the Cooperator may be reimbursed for air travel up to the business class rate

(*i.e.*, a premium class rate other than the first-class rate). Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the Cooperator receives written documentation to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; or

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time and ending with the scheduled arrival time, including stopovers and changes of planes, exceeds 14 hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non–work days (*e.g.*, weekends, holidays, personal leave, etc.) immediately following the date of arrival. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel; and

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses;

(21) Automobile mileage at the local U.S. Embassy rate, or rental cars while in travel status;

(22) Subject to § 1484.37 and paragraph (b)(7) of this section, other allowable expenditures while in travel status;

(23) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office;

(24) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, and personal digital assistants);

(25) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies;

(26) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for Cooperator program–funded travel of non–Cooperator personnel, provided the types and extent and cost of coverage are in accordance with the Cooperator's policy and sound business practice;

(27) Market research, including research to determine the types of products that are desired in a market;

(28) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(29) Legal fees to obtain advice on the host country's labor laws;

(30) Employment agency fees;

(31) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. Cooperators are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners, and receptions. Cooperators may exceed Embassy guidelines only when they have received written authorization from the FAS Attaché/Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. Cooperators must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the Cooperator should provide, in its request for approval, the basis for determining its proposed expenses;

(32) Travel costs for dependents as allowed in 2 CFR part 200 (*e.g.*, for travel of duration of six months or more with prior approval of CCC);

(33) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months;

(34) Approved demonstration projects;

(35) Purchase of trade and business periodicals containing material related to market development activities for use by overseas staffs;

(36) Training expenses in the United States for FSNs;

(37) Language training for U.S. citizen employees at the foreign post of assignment;

(38) Forward year financial obligations required by local law or custom, such as severance pay, attributable to employment of foreign nationals, or forfeiture of rent or deposits, attributable to the closure of an office;

(39) Rental or lease expenditures for storage space for program–related materials;

(40) Shipment of samples or other program materials;

(41) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program–related airtime to total airtime;

(42) Non–travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(43) An audit of a Cooperator as required by 2 CFR part 200, subpart F, if the Cooperator program is the Cooperator's largest source of Federal funding;

(44) The translation of written materials as necessary to carry out approved activities;

(45) Business cards that target a foreign audience;

(46) Expenditures associated with developing, updating, and servicing websites on the internet that: Contain a message related to exporting or international trade, include a discernible ''link'' to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by FAS. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for websites that include any sort of ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(47) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(48) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities;

(49) Membership fees in professional, industry–related organizations; and

(50) Contracts with U.S.–based organizations when the only contracted service such organizations provide to a Cooperator is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.*, a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.–based organization provides administrative services to the Cooperator's domestic home

office during a program year, any direct promotional services such organization provides to the Cooperator, whether for the Cooperator's domestic or overseas offices, during the same program year are not reimbursable.

[85 FR 1084, Jan. 9, 2020, as amended at 86 FR 68882, Dec. 6, 2021]

§ 1484.53 Expenditures not reimbursed under the Cooperator program.

(a) CCC will not reimburse unreasonable expenditures or any cost of:

(1) Expenses, fines, settlements, judgements, or payments relating to legal suits, challenges, or disputes, except as otherwise allowed in 2 CFR part 200;

(2) Product development, product modification, or product research;

(3) Product samples;

(4) Slotting fees or similar sales expenditures;

(5) The purchase, construction, or lease of space for permanent, non-mobile displays, *i.e.*, displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case, if the Cooperator sought and received prior written approval from CCC of such construction or purchase;

(6) Rental, lease, or purchase of warehouse space, except for storage space for program-related materials;

(7) Office parking fees;

(8) Coupon redemption or price discounts;

(9) Refundable deposits or advances;

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a program notice issued on FAS' website;

(11) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

(12) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;

(13) Travel of applicants for employment interviews;

(14) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(15) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future agreement or regulatory compliance;

(16) Any arrangement that has the effect of reducing the selling price of an agricultural commodity;

(17) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(18) Goods, services, and salaries of personnel provided by a third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the Cooperator;

(25) Credit card fees;

(26) Refreshments, or related equipment, for office staff;

(27) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the United States, belonging to U.S. citizen employees;

(28) Home office domestic administrative expenses, including communication costs;

(29) Payment of a U.S. or foreign employee's or contractor's share of personal taxes, except where a foreign country's laws require the Cooperator to pay such employee's or contractor's share;

(30) STRE expenses incurred in the United States, except as otherwise provided in § 1484.52(b)(31);

(31) Entertainment (*e.g.*, amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events);

(32) Functions (including receptions and meals at Cooperator staff conferences) at which target groups, such as members of the overseas trade, opinion leaders, foreign government officials, and other similar groups, are not present;

(33) Promotions directed at consumers purchasing in their individual capacity; and

(34) Any expenditure made for an activity prior to CCC's approval of that activity.

(b) The CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

(c) CCC will reimburse for expenditures made after the conclusion of the program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(d) A Cooperator shall not use project funds for any activity, or any expenses incurred by the Cooperator prior to the date specified in the approval letter or after the date the agreement is suspended or terminated, except as otherwise permitted by CCC.

§ 1484.54 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Cooperator may submit claims for reimbursement of eligible expenses incurred in implementing FMD activities, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Cooperator will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) All claims for reimbursement shall be submitted by the FMD Cooperator's U.S. office to CCC. CCC will make all payments to Cooperators in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Cooperators will be authorized to submit requests for reimbursement or advance at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) CCC will not reimburse claims submitted later than 6 months after the end of an FMD Cooperator's program year.

(e) If CCC overpays a reimbursement claim, the FMD Cooperator shall repay CCC within 30 calendar days of such overpayment the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall repay CCC within 30 calendar days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) FMD funds may be expended by FMD Cooperators only on legitimate, approved activities as set forth in the agreement and approval letter. If a Cooperator discovers that FMD funds have not been properly spent, it shall notify CCC and shall within 30 calendar days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The FMD Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The FMD Cooperator shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and its U.S. office shall report such actions in writing to the appropriate FAS Division Director.

§ 1484.55 Advances.

(a) *Policy*. In general, CCC operates the Cooperator program on a reimbursable basis.

(b) *Exception*. Upon request, CCC may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by CCC only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. CCC will provide this type of advance expense payment in lieu of direct payments by CCC to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. CCC will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior program year. When approving a request for an advance, CCC may require the Cooperator to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the Cooperator program. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, the Cooperator's history of performance in the Cooperator program, the Cooperator's perceived financial stability and resources, and any other factors presented in the particular situation that may reflect on the Cooperator's responsibility or the riskiness of its activities.

(c) *Interest*. A Cooperator shall deposit and maintain in an insured account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Cooperator on funds advanced by CCC is not program income. Up to $500 of interest earned per year may be retained by the Cooperator for administrative expenses. Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(d) *Refunds due CCC*. A Cooperator shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the Cooperator must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

Subpart E—Reporting, Evaluation, and Compliance

§ 1484.70 Reports.

(a) Cooperators are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for the required financial and performance reports will be specified in the agreement between CCC and the Cooperator.

(b)(1) In addition to the information required in 2 CFR 200.329(c)(2), a Cooperator's performance reports must include pertinent information regarding the Cooperator's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Cooperator must provide an explanation in the report.

(2) A Cooperator must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Cooperator's performance data to determine whether it is accurate and reliable. The Cooperator must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(c) All final performance reports will be made available to the public.

(d) Not later than 45 calendar days after the completion of travel (other than local travel), a Cooperator shall submit a trip report. The report must be submitted to the appropriate Attaché/Counselor(s) and must include the name(s) of the traveler(s), purpose

of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(e) Not later than 90 calendar days after the end of its program year, a Cooperator shall submit a report on any research conducted pursuant to the approved FMD program.

(f) If requested by FAS, a Cooperator must provide to FAS additional information or reports relating to the agreement.

(g) If a Cooperator requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

[85 FR 1084, Jan. 9, 2020, as amended at 86 FR 68882, Dec. 6, 2021]

§ 1484.71 Disclosure of program information.

(a) Documents submitted to CCC by Cooperators are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A, and, specifically, 7 CFR 1.12.

(b) Upon request, a Cooperator shall provide to any person a copy of any document in its possession or control containing market information that is developed and produced under the terms of its agreement. The Cooperator may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) Any research conducted by a Cooperator pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1484.72 Evaluation.

(a) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306, 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the Cooperator program. Evaluation of the Cooperator program's effectiveness will depend on a clear statement by each Cooperator of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, a schedule of measurable milestones for gauging success, a plan for achievement, and reports of activity results at regular intervals. The overall goal of Cooperators' programming is to achieve or maintain sales that would not have occurred in the absence of FMD funding. A Cooperator that can demonstrate such sales, taking into account extenuating factors beyond the Cooperator's control, will have met the overall objective of the GPRA and the need for evaluation.

(b) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a Cooperator's program, contribute to program accountability, and provide evidence of program effectiveness.

(c) When required by CCC, a Cooperator shall complete a program evaluation. A program evaluation is a review of the Cooperator's entire program, or an appropriate portion of the program as agreed to by the Cooperator and CCC, to determine the effectiveness of the Cooperator's strategy in meeting specified goals. The actual scope and timing of the program evaluation shall be determined by the Cooperator and CCC and specified in the Cooperator's approval letter. A Cooperator may contract with an independent evaluator to satisfy this requirement, although CCC reserves the right to have direct input and control over the design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator. In addition to the requirements set forth in 2 CFR part 200, a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The activities covered by the evaluation;

(3) A concise statement of the constraint(s) and opportunities and the

goals specified in the approved agreement;

(4) A description of the evaluation methodology;

(5) A description of additional export sales achieved, including the ratio of additional export sales in relation to Cooperator program funding received;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(d) A Cooperator shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation.

(e) On an annual basis, or more often when appropriate or required by CCC, a Cooperator shall complete and submit program success stories. CCC will announce to all Cooperators the detailed requirements for completing and submitting program success stories.

[85 FR 1084, Jan. 9, 2020, as amended at 86 FR 68882, Dec. 6, 2021]

§ 1484.73 Failure to make required contribution.

A Cooperator's required contribution will be specified in the Cooperator's approval letter. If a Cooperator fails to contribute the amount specified in its approval letter, the Cooperator shall pay to CCC in U.S. dollars the difference between the amount it has contributed, and the amount specified in the approval letter. If the Cooperator's required contribution is specified as a percentage of the total amount reimbursed by CCC, the Cooperator may either return to CCC the necessary amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A Cooperator shall remit such payment within six months after the end of its program year. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1484.74 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of a Cooperator's activities under this program to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Cooperators shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(b) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(c) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Cooperator. The compliance report will detail any instances where it appears that the Cooperator is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Cooperator and will explain the basis for any recovery of funds from the Cooperator. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the Cooperator program, CCC may require the Cooperator to contract for an independent audit.

(d) In addition, CCC may notify a Cooperator in writing at any time if CCC determines that CCC may be entitled to recover funds from the Cooperator. CCC will explain the basis for any recovery of funds from the Cooperator in the written notice. The Cooperator shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Cooperator shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Cooperator notifies CCC within 30 calendar days of the date of the written notice that the Cooperator intends to file an

appeal pursuant to the provisions of this part, the amount owed to CCC by the Cooperator is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(e) The fact that a compliance review has been conducted by USDA staff does not signify that a Cooperator is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

§ 1484.75 Cooperator response to compliance report.

(a) A Cooperator shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Cooperator does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Cooperator shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(b) After reviewing the response, CCC shall determine whether the Cooperator owes any funds to CCC and will inform the Cooperator in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Cooperator a written demand for payment of the debt pursuant to debt settlement policies and procedures in 7 CFR part 1403.

§ 1484.76 Cooperator appeals of CCC determinations.

(a) Within 30 calendar days of the date of the issuance of a determination, the Cooperator may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Cooperator may also request a hearing.

(b) If the Cooperator requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(c) CCC will base its final determination upon information contained in the administrative record. The Cooperator must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1484.77 Submissions.

For all permissible methods of delivery, submissions required by this part shall be deemed submitted as of the date received by CCC.

§ 1484.78 Amendments.

An agreement may be amended in writing with the consent of CCC and the Cooperator. All requests for program amendments must be submitted to CCC in writing and contain a justification for why the amendment is necessary. All amendment requests must be reviewed and approved by CCC before an amendment can be issued.

§ 1484.79 Subrecipients.

(a) A Cooperator may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Cooperator for this purpose. The Cooperator must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.332 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Cooperator must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Cooperator must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to

a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Cooperator the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A Cooperator must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

[85 FR 1084, Jan. 9, 2020, as amended at 86 FR 68882, Dec. 6, 2021]

§ 1484.80 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Cooperators and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Cooperator or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Cooperator or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Cooperator or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Cooperator or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Cooperator or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Cooperator or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Cooperator or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Cooperators or subrecipients, including for-profit entities and foreign organizations. Cooperators and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1484.81 Suspension and termination of agreements.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.339 or 200.340. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.339 or 200.340 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Cooperator:

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.344 and 200.345.

[85 FR 1084, Jan. 9, 2020, as amended at 86 FR 68882, Dec. 6, 2021]

§ 1484.82 Noncompliance with an agreement.

(a) If a Cooperator fails to comply with any term in its agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Cooperator, following the procedures set forth in this part. CCC may also initiate a claim against a Cooperator if program income or CCC-provided funds are lost due to an action or omission of the Cooperator. If any Cooperator has engaged in fraud with respect to the Cooperator program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Cooperator liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Cooperator plus interest as determined by FAS; and

(3) Collect liquidated damages from such Cooperator in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

Subpart A—[Reserved]

Subpart B—Market Access Program

Sec.

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SOURCE: 85 FR 1732, Jan. 13, 2020, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Market Access Program

§ 1485.10 General purpose and scope.

(a) This subpart sets forth the general terms and conditions governing the Commodity Credit Corporation's (CCC) operation of the Market Access Program (MAP).

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this subpart, applies to the Market Access Program (MAP) Program.

(3) In addition to the provisions of this subpart, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the MAP, to the extent that these regulations do not directly conflict with the provisions of this subpart. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the MAP.

(c) Under the MAP, CCC may provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. MAP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. CCC expects all activities that occur in the United States for which MAP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the MAP Participant's approved MAP program.

(d) The MAP generally operates on a reimbursement basis.

(e) CCC's policy is to ensure that benefits generated by MAP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage or sole benefit from program activities. CCC also endeavors to enter into MAP agreements covering a broad array of agricultural commodity sectors. The MAP is administered by the Foreign Agricultural Service (FAS) acting on behalf of CCC.

§ 1485.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity means a specific foreign market development effort undertaken by a MAP Participant.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a MAP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: Rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, and business cards);

(2) Personnel (including, but not limited to: Salaries, benefits, payroll taxes, individual insurance, and training);

(3) Communications (including, but not limited to: Phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, and walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to: Planning, supervision, supervisory travel, teambuilding, recruiting, and hiring);

(5) Utilities (including, but not limited to: Sewer, water, and energy);

(6) Professional services (including, but not limited to: Accounting expenses, financial services, and investigatory services).

Affiliate means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment, other than a mutual fund.

Agreement means a legally binding grant entered into between CCC and a MAP applicant setting forth the terms and conditions to implement approved activities under the MAP program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its MAP application for a program year

has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement. This letter requires a countersignature by the MAP Participant before it becomes effective.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand participant means a small-sized U.S. for-profit entity or a U.S. agricultural cooperative that owns the brand(s) of the eligible commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the MAP brand promotion program of another MAP Participant. This definition does not include any U.S. agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

Brand promotion means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a MAP Participant in the brand program.

Constraint means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Contribution means the funds, *e.g.*, money, personnel, materials, services, facilities, or supplies, provided by a MAP Participant, State agency or entities in the MAP Participant's industry (''U.S. industry'') in support of a MAP Participant's generic promotion program as well as funds provided by the MAP Participant, U.S. industry, or State agency in support of related promotion activities in the markets covered by the MAP Participant's agreement.

Cost share means the funds, *e.g.*, money, personnel, materials, services, facilities, or supplies, provided by a MAP Participant, entities in the MAP Participant's industry, or State agency in support of an approved activity.

Credit memo means a commercial document, also known as a credit memorandum, issued by the MAP Participant to a commercial entity that owes the MAP Participant a certain sum. A credit memo is used when the MAP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the MAP Participant owes the entity against the amount the entity owes to the MAP Participant.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

FAS website means a website maintained by FAS providing information on the MAP. It is currently accessible at *www.fas.usda.gov/programs/market-access-program-map*.

Foreign subrecipient means a foreign entity that a MAP Participant works with, in accordance with this subpart, to promote the export of an eligible commodity under the MAP program.

Generic promotion means an activity that is not a brand promotion but, rather, promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.*, a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted eligible commodity or product from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the MAP Participant must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if

the promotion of the separate items maintains a unified theme (*i.e.*, a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

MAP is the acronym for the Market Access Program.

MAP Participant or Participant means an entity that has entered into an agreement with CCC.

Market means a country or region targeted by an activity.

Notification means a document from the MAP Participant by which the MAP Participant proposes to CCC changes to the activities and/or funding levels in an approved agreement and/or approval letter.

Product samples means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (*e.g.*, fresh or processed), independent of the ultimate utilization of the sample. Product samples might be used in support of international marketing activities including, but not limited to: Displays, food process testing, cooking demonstrations, or trade and consumer tastings.

Program notice means documents that CCC issues for informational purposes. These notices are currently made available electronically through the FAS website. These notices have no legal effect. They are intended to alert MAP Participants of various aspects of CCC's current administration of the MAP program. For example, CCC issues notices to alert Participants of applicable Federal pay scale rates and lists of economic and trade sanctions against certain foreign countries.

Program year means, unless otherwise agreed to in writing between CCC and a MAP Participant, a 12-month period during which a MAP Participant can undertake activities consistent with this subpart and its agreement and approval letter with CCC. This is also known as a project period, which in multiple year awards will be divided into budget periods.

Promoted commodity means an eligible commodity the sale of which is the intended result of a promotional activity under the MAP.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Sales team means a group of individuals engaged in an approved activity intended to result in specific sales.

Small-sized entity means a U.S. commercial entity that meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG is the acronym for State Regional Trade Group. An SRTG is a nonprofit association of state-funded agricultural promotion agencies.

Supergrade means a salary level above the reimbursable salary range generally allowable under the MAP, which CCC may approve on a case by case basis. This salary level is available only for certain non-U.S. employees who direct MAP Participants' overseas offices.

Temporary contractor means a contractor, typically a consultant or other highly paid professional, that is hired on a short-term basis to assist in the performance of an activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

Unified Export Strategy (UES) means a holistic marketing plan that outlines an applicant's proposed foreign market development activities and requested funding under each of the FAS market development programs.

Unified Export Strategy (UES) system means an online internet system maintained by FAS through which applicants may currently apply to the MAP and other FAS market development programs. The system is currently accessible at *https://apps.fas.usda.gov/ues/webapp/*. FAS may prescribe a different system through which applicants may apply to MAP and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

U.S. for-profit entity means an organized or incorporated firm, association, or other entity that is located and doing business for profit in the United States and is engaged in the export or sale of an eligible commodity.

§ 1485.12 Participation eligibility.

(a) To participate in the MAP, an entity shall be:

(1) A nonprofit U.S agricultural trade organization;

(2) A nonprofit SRTG;

(3) A U.S. agricultural cooperative; or

(4) A State agency.

(b) CCC will enter into an agreement only for the promotion of an eligible commodity.

(c) FAS may set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable NOFO posted on the U.S. Government website for grant opportunities.

§ 1485.13 Application process.

(a) *General application requirements.* CCC will periodically announce through a NOFO that it is accepting applications for participation in the MAP for a specified program year. This announcement will be posted on the U.S. Government website for grant opportunities. Applications shall be submitted in accordance with the terms and requirements specified in the announcement and in this part. Currently, applicants are encouraged to submit applications through the UES system but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides MAP funds to brand participants for branded promotion. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the MAP program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the MAP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive MAP funding.

§ 1485.14 Application review and formation of agreements.

(a) *General.* (1) CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal.

(2) When considering eligible nonprofit U.S. trade organizations, CCC may weigh which organizations have the broadest producer representation and affiliated industry participation of the commodity being promoted. CCC

may require that an applicant participate in the MAP through another MAP Participant or applicant. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(b) *Application review criteria.* CCC follows results-oriented management principles and considers the following criteria when assessing the likelihood of success of the applications it receives, determining which applications to recommend for approval, and developing preliminary recommended funding levels:

(1) Strategic planning (25%);

(2) Program implementation (25%); and

(3) Program results and evaluation (50%).

(c) *Allocation factors.* CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's MAP announcement. Generally, extensions will not be allowable.

(d) *Approval decision*—(1) *Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in paragraphs (a), (b), and (c) of this section.

(2) *Notification of decision.* CCC will notify each applicant in writing of the final disposition of its application. CCC will send an agreement, an approval letter, and a signature card to each approved applicant. The agreement and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a MAP Participant's program, including any requirements with respect to contribution, cost share and program evaluations. An applicant that decides to accept the terms and conditions contained in the agreement and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the agreement and the approval letter and submit these to CCC. Final agreement shall occur when the agreement and the approval letter are signed by both parties. The agreement, approval letter, and this subpart shall establish the terms and conditions of a MAP agreement between CCC and the approved applicant.

(e) *Signature cards.* The MAP Participant shall designate at least two individuals in its organization to sign agreements and amendments, approval letters, reimbursement claims, and advance requests. The MAP Participant shall submit the signature card signed by those designated individuals and by the MAP Participant's CEO to CCC prior to the start of the program year. The Participant shall immediately notify CCC of any changes in signatories (*e.g.*, removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

(f) *UES ID and passwords.* CCC will provide each MAP Participant with IDs and passwords for the UES system, as necessary. MAP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies. MAP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

(g) *Annual size certification.* A MAP Participant through which small-sized U.S. for-profit entities and/or U.S. agricultural cooperatives are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized U.S. entities or U.S. agricultural cooperatives as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this subpart.

(h) *Changes to activities and funding*—(1) *Adding a new activity.* (i) A MAP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the MAP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the

proposed budget, and a justification for the transfer of funds.

(iii) After receipt of the notification, CCC will inform the MAP Participant via the UES system whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) A MAP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) A MAP Participant may make significant adjustments below that threshold to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 calendar days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity and any changes to the activity, the existing funding level, or the proposed funding level and shall include a justification for the transfer of funds, if applicable.

§ 1485.15 Operational procedures for brand programs.

(a) Where CCC approves an application by a MAP Participant to run a brand promotion program that will include brand participants, the MAP Participant shall establish brand program operational procedures. The MAP Participant annually shall submit to CCC for approval its proposed brand program operational procedures for such program year. CCC will notify all new and existing MAP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements.

(b) The MAP Participant shall not enter into any participation agreements with brand participants nor shall it implement any MAP brand activities for the applicable program year unless and until CCC has communicated in writing its approval of the proposed operational procedures to the MAP Participant.

(c) Participation agreements between MAP Participants and brand participants. Where CCC approves a MAP Participant's application to run a brand promotion program that will include brand participants, the MAP Participant shall enter into participation agreements with brand participants. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the MAP Participant's approved program year;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require: That all product labels, promotional material, and advertising will identify the origin of the eligible commodity as ''American,'' ''Product of the United States of America,'' ''Product of the U.S.,'' ''Product of the U.S.A.,'' ''Product of America,'' ''Grown in the United States of America,'' ''Grown in the U.S.,'' ''Grown in the U.S.A.,'' ''Grown in America,'' ''Made in the United States of America,'' ''Made in the U.S.,'' ''Made in the U.S.A.,'' ''Made in America,'' or product of, grown in, or made in any state

or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of ⅛ inch (.42 centimeters) in height based on the lower case letter ''o.'' The use of these terms as a descriptor or in the name of the product (*e.g.*, Texas style chili, Bob's American Pizza) does not satisfy the product origin requirement. Phrases ''product of,'' ''grown in,'' or ''made in'' are encouraged, but not required. A MAP Participant that wishes to use an origin statement that varies from those set out in this subsection must submit the proposed statement to CCC for review and must receive approval to use the statement before its use in an activity. A MAP Participant may request an exemption from this requirement on a case by case basis. All such requests shall be in writing and include justification satisfactory to CCC that this labeling requirement would hinder a MAP Participant's promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, CCC may temporarily waive this requirement where CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to MAP Participants via a program notice issued on FAS' website;

(7) Include a written certification by the brand participant that it is either a small–sized entity as defined in this subpart or a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the MAP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third–party funds or other contribution or cost share to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for five calendar years following the end of the applicable program year and make such records and documents available upon request to authorized officials of the U.S. Government.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68883, Dec. 6, 2021]

§ 1485.16 Contribution and cost share rules.

(a) A MAP Participant implementing a MAP generic promotion program shall make contributions equal to at least 10 percent of the total amount reimbursed by CCC for all approved generic promotion activities undertaken by the MAP Participant. The contribution amount will be reflected in the award budget.

(b) A MAP Participant conducting its own brand promotion or a brand participant that is participating in the MAP brand promotion program of another MAP Participant shall provide funds for the branded activity in an amount that is at least equivalent to the amount of assistance they get from MAP for that activity.

(c) A MAP Participant must use its own funds and may not use MAP funds to pay any administrative costs of the MAP Participant's U.S. office(s), including legal fees, except as set forth in this subpart. Where the MAP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contribution or cost share the MAP Participant contributes to MAP generic or brand promotion programs.

(d)(1) In calculating the amount of contribution or cost share that it will make, and the contribution or cost share that the U.S. industry (including expenditures to be made by entities in the applicant's industry in support of the entities' related promotion activities in the markets covered by the applicant's application) or State or local agency will make, the MAP applicant may include the costs (or such prorated costs) listed under paragraph (d)(2) of this section if:

(i) Expenditures are necessary and reasonable for accomplishment of an approved activity;

(ii) Expenditures are not included as cost share for any other Federal award;

(iii) Expenditures are not paid by the Federal Government under another

Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(iv) The contribution or cost share is made during the period covered by the agreement.

(2) Subject to paragraph (d)(1) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this subpart, the following are eligible contribution or cost share:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies, or services;

(iv) The cost of office space, including legal fees;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) Fees for office parking;

(ix) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(x) The cost of activities conducted overseas;

(xi) Credit card fees;

(xii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with agreement or regulatory requirements;

(xiii) The cost of giveaways, awards, prizes, and gifts;

(xiv) The cost of product samples;

(xv) Fees for participating in U.S. Government sponsored or endorsed export promotion activities;

(xvi) The cost of air and local travel in the United States related to a foreign market development effort;

(xvii) Transportation and shipping costs;

(xviii) The cost of displays and promotional materials;

(xix) Advertising costs;

(xx) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(xxi) The costs associated with trade shows, seminars, and STRE conducted in the United States, and costs associated with entertainment conducted in the United States where such entertainment costs have a programmatic purpose and are authorized in the agreement and/or the approval letter or are authorized by prior written approval of CCC;

(xxii) Product research that is undertaken to benefit an industry and has a specific export application;

(xxiii) Other administrative expenses (*e.g.*, supervisory travel from the U.S. to an overseas office); and

(xxiv) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contribution or cost share:

(i) Any portion of salary or compensation of an individual who is the target of a promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant's organization;

(iii) Any land costs other than allowable costs for office space;

(iv) The cost of refreshments and related equipment provided to office staff;

(v) The cost of insuring articles owned by private individuals;

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research;

(viii) Slotting fees or similar sales expenditures;

(ix) Funds, services, capital goods, or personnel provided by any U.S. Government agency;

(x) The value of any services generated by a MAP Participant or third party that involve no expenditure by the MAP Participant or third party, *e.g.*, free publicity;

(xi) Membership fees in clubs and social organizations; and

(xii) Any expenditure for an activity prior to CCC's approval of that activity.

(4) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the MAP Participant as an eligible contribution or cost share.

§ 1485.17 Reimbursement rules.

(a) A MAP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR 200 to the extent these principles do not directly conflict with the provisions of this subpart, for either brand or generic promotion activities, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, including in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the MAP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement). Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In–store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples), including shipment of samples or other program materials;

(5) Temporary displays and rental of space for temporary displays;

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States, including space rental, equipment rental, and duplication of seminar materials;

(7) Subject to paragraph (b)(18) of this section, non-travel expenditures, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials, associated with retail, trade, and consumer exhibits and shows, whether held outside or inside the United States. However, non-travel expenditures associated with retail, trade, and consumer exhibits and shows held inside the United States are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. Retail, trade, and consumer exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(8) Subject to paragraph (b)(18) of this section, international travel expenditures (with airfare limited to the full fare economy rate), including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for no more than two representatives of a single brand participant (or MAP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products

at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions;

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to MAP Participants via a program notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

(12) The design and production of packaging, labeling, or origin identification to be used during the program year in which the expenditure is made, if such packaging, labeling, or origin identification is necessary to meet the importing requirements of a foreign country;

(13) The design, production, and distribution of coupons for products other than the MAP Participant's promoted products. If such activities include both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products, expenditures for such activities will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement);

(14) An audit of a MAP Participant as required by 2 CFR part 200, subpart F if the MAP is the MAP Participant's largest source of Federal funding;

(15) The translation of written materials as necessary to carry out approved activities;

(16) Expenditures associated with developing, updating, and servicing websites on the internet that clearly target a foreign audience;

(17) International travel expenditures (with airfare limited to the full fare economy rate), including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the MAP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv)(A) The MAP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(*1*) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(*2*) Pre-arranged one-on-one business meetings; and

(*3*) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(B) Reimbursement is conditional on the MAP Participant having notified in writing the Attaché/Counselor in the

destination country in advance of the travel;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade, or consumer exhibit or show, whether held outside or inside the United States, MAP funds may be used to reimburse the travel and/or non–travel expenditures of only those MAP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this paragraph (b)(18), on a case by case basis, where the trade show is segregated into product pavilions, a company's distributor or importer is located outside the U.S. pavilion, or when a company can demonstrate that there is a benefit to being located outside the U.S. pavilion. Such waiver will be provided to the MAP Participant in writing; and

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to a MAP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.*, a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the MAP Participant's domestic home office during a program year, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same program year are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this subpart, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, provided such benefits are granted under established written policies, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS-15 Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel.

(2) Approved Supergrade salaries for non-U.S. citizen employees and non-U.S. contractors stationed overseas;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas, subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, except for approved Supergrades; or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the MAP Participant shall document by a salary survey or other means, except for approved Supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(5) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(6) Overtime paid to clerical staff of approved MAP-funded overseas offices;

(7) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross GS-15, Step 10 salary for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(8)(i) Subject to paragraph (b)(18) of this section, international travel expenditures, including per diem and any fees for passports, visas, inoculations, and modifying the originally purchased airline ticket, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts

300 through 304), except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are reimbursable only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Participant has not participated in within the last three years using funds from a source other than the MAP. Retail, trade, and consumer exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(A) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(B) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country.

(ii) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the MAP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the MAP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(iii) In very limited circumstances, the MAP Participant may be reimbursed for air travel up to the business class rate (*i.e.*, a premium class rate other than the first class rate). Such circumstances are:

(A) Regularly scheduled flights between the origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; or

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time and ending with the scheduled arrival time, including stopovers and changes of planes, exceeds 14 hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any nonwork days (*e.g.*, weekends, holidays, personal leave, etc.) immediately following the date of arrival. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel;

(iv) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses;

(9) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status;

(10) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 300 through 304);

(11) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the MAP Participant's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office;

(12) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, and personal digital assistants);

(13) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies;

(14) Accident liability insurance premiums for facilities used jointly with third-party participants for MAP activities or for MAP-funded travel of third-party participants, provided the types and extent and cost of coverage are in accordance with the MAP Participant's policy and sound business practice;

(15) Market research, including research to determine the types of products that are desired in a market;

(16) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(17) Legal fees to obtain advice on the host country's labor laws;

(18) Employment agency fees;

(19) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. MAP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners, and receptions. MAP Participants may exceed Embassy guidelines only when they have received written authorization from the FAS Attaché/Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. MAP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the MAP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(20) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months;

(21) U.S. office(s) administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

(22) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(23) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for international retail, trade, and consumer exhibits and shows conducted in the United States. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is included on the list of approved U.S. exhibits and shows announced via a program notice issued on FAS' website and the exhibit or show is one that the Participant has not participated in within the last three years using funds from a source other than the MAP. Retail and trade exhibits and shows held inside the United States may be considered for inclusion on the list of approved exhibits and shows if they are:

(i) A food or agricultural exhibit or show with no less than 30% of exhibitors selling food or agricultural products; and

(ii) An international exhibit or show that targets buyers, distributors, and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country;

(24) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for seminars and educational training conducted in the United States;

(25) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304), for one home office MAP Participant employee, one MAP Participant board member, or a state department of agriculture employee paid by the MAP Participant, when such individual accompanies foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the MAP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The MAP-sponsored traveler submits a follow-up trip report to CCC that includes the following:

(A) Purpose for the individual's participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(26) Approved demonstration projects;

(27) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(28) Rental or lease expenditures for storage space for program-related materials;

(29) Business cards that target a foreign audience;

(30) Expenditures associated with developing, updating, and servicing websites on the internet that: Contain a message related to exporting or international trade, include a discernible ''link'' to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by FAS. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for websites that include any sort of ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(31) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities;

(32) Membership fees in professional, industry-related organizations;

(33) Travel costs for dependents, as allowed in 2 CFR part 200 (*e.g.*, for travel of duration of six months or more with prior approval of CCC);

(34) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program-related airtime to total airtime; and

(35) Production and distribution of publications.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, judgments, or payments relating to legal suits, challenges, or disputes, except as otherwise allowed in 2 CFR part 200;

(3) The design and production of packaging, labeling, or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification, or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase, construction, or lease of space for permanent, non-mobile displays, *i.e.*, displays that are constructed to remain permanently in the

same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case by case basis, if the Participant sought and received prior written approval from CCC of such construction or purchase;

(8) Rental, lease, or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a program notice issued on FAS' website;

(12) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of an agricultural commodity;

(18) Goods, services, and salaries of personnel provided by a third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the MAP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraph (c)(21) of this section and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved MAP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 300 through 304);

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the MAP Participant to pay such employees' or contractors' share;

(29) Any expenditure made for an activity prior to CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening;

(31) Credit card fees;

(32) Entertainment, *e.g.*, amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events;

(33) Refreshments, or related equipment, for office staff; and

(34) Expenditures associated with a MAP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures.

(e) Paragraphs (e)(1) through (4) of this section shall apply to the approval of Supergrades.

(1) With respect to individuals who are not U.S. citizens and who are hired by MAP Participants either as employees or contractors acting as employees, CCC will not ordinarily reimburse any portion of such individual's compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan applicable to the country in which the employee or contractor works. However, a

MAP Participant may seek a higher level of reimbursement for a non-U.S. citizen employee or contractor who will be employed as a country director or regional director by requesting that CCC approve that employee or contractor as a Supergrade.

(2) To request approval of a Supergrade, the MAP Participant shall provide CCC with a detailed description of both the duties and responsibilities of the position and the qualifications and background of the employee or contractor concerned. The Participant shall also justify why the comparable FSN salary level is insufficient.

(3) Where a non-U.S. citizen employee or contractor will be employed as a country director, the MAP Participant may request approval for a ''Supergrade I'' salary level, equivalent to a single grade increase over the existing top grade of the FSN salary plan. The Supergrade I and its step increases are calculated by increasing each of the steps in the top FSN grade by the percentage difference between the second highest and the highest grade in the FSN salary plan. Where the non-U.S. citizen employee or contractor will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP Participant may request approval for a ''Supergrade II'' salary level, which is calculated relative to a Supergrade I in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(4) A U.S. citizen with dual citizenship with another foreign country or countries shall not be considered a non-U.S. citizen.

(f) For a brand promotion activity, CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity.

(g) CCC will reimburse for expenditures made after the conclusion of a MAP Participant's program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(h) A MAP Participant shall not use MAP funds for any activity, or any expenses incurred by the MAP Participant prior to the date specified in the approval letter or after the date the agreement is suspended or terminated, except as otherwise permitted by CCC.

(i) Except as otherwise provided in this subpart, MAP-funded travel shall conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304) and 2 CFR part 200, and MAP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The MAP Participant shall notify the Attaché/Counselor in the destination country(ies) in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

(j) CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.18 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Participant may submit claims for reimbursement of eligible expenses incurred in implementing MAP activities, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Participant will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) All claims for reimbursement shall be submitted by the MAP Participant's U.S. office to CCC. CCC will make all payments to Participants in U.S. dollars. FAS will initiate payment

within 30 days after receipt of the billing, unless the billing is improper.

(c) Participants will be authorized to submit requests for reimbursement or advance at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) CCC will not reimburse claims submitted later than 6 months after the end of a MAP Participant's program year.

(e) If CCC overpays a reimbursement claim, the MAP Participant shall repay CCC within 30 calendar days of such overpayment the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a MAP Participant receives a reimbursement or offsets an advanced payment which is later disallowed, the MAP Participant shall repay CCC within 30 calendar days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) MAP funds may be expended by MAP Participants only on legitimate, approved activities as set forth in the agreement and approval letter. If a MAP Participant discovers that MAP funds have not been properly spent, it shall notify CCC and shall within 30 calendar days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The MAP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and its U.S. office shall report such actions in writing to the appropriate FAS Division Director.

§ 1485.19 Advances.

(a) *Policy.* In general, CCC operates the MAP on a reimbursable basis.

(b) *Exception.* A MAP Participant may request an advance of MAP funds from CCC for generic promotion activities, provided the MAP Participant meets the criteria for advance payments in 2 CFR part 200. CCC will not approve any request for an advance submitted after the end of a MAP Participant's program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP Participant's total approved generic activity budget for the program year. CCC will not advance funds to a MAP Participant for brand promotion activities. When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the MAP. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in the MAP, the Participant's perceived financial stability and resources, and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) *Interest.* A MAP Participant shall deposit and maintain all funds advanced by CCC in an insured account in the United States. The account shall be interest-bearing, unless the exceptions in 2 CFR part 200 apply. Interest earned by the MAP Participant on funds advanced by CCC is not program income. Up to $500 of interest earned per year may be retained by the MAP Participant for administrative expenses. Any additional interest earned on MAP advances shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(d) *Refunds due CCC.* A MAP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. By the end of

the 90 calendar days, the MAP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.20 Employment practices.

(a) A MAP Participant shall enter into written contracts with all overseas employees who are paid in whole or in part with MAP funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A MAP Participant shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A MAP Participant may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Participants should consult local laws regarding currency restrictions.

§ 1485.21 Financial management.

(a) A MAP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles and complies with the standards in 2 CFR part 200.

(b) A MAP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) A MAP Participant shall retain all records concerning a MAP program transaction for a period of five years after completion of the transaction and permit authorized officials of the U.S. Government to have full and complete access, for such five-year period, to such records. These records shall include all documents related to employment of any employees whose salaries are reimbursed in whole or in part with MAP funds, whether such employees are based in the United States or overseas, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors.

(d) A MAP Participant shall also maintain adequate documentation related to the proper disposition of all personal property having a useful life of more than one year and an acquisition cost of $500 or more purchased by the Participant and for which the Participant is reimbursed, in whole or in part, with MAP funds.

(e) A MAP Participant shall maintain its records of expenditures, contributions, and cost share in a manner that allows it to provide information by program year, activity plan, country or region (as applicable), activity number, and cost category. Such records shall include copies of:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Receipts for any other program-related expenditure in excess of a minimum level that CCC shall determine and announce in writing to all MAP Participants via a program notice issued on the FAS website. Receipts for all actual M&IE reimbursements must be maintained, regardless of the amount;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Reimbursement claims;

(5) An itemized list of claims charged to each of the MAP Participant's MAP accounts;

(6) Documentation, with accompanying English translation, supporting each reimbursement claim, including evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts, purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7)(i) Each MAP Participant must keep records documenting all claimed contributions and cost share, to include:

(A) Copies of invoices or receipts for expenses paid by the U.S. industry or State agency and not reimbursed by the MAP Participant for the joint activity, or

(B) If invoices are not available, an itemized statement from the U.S. industry or State agency as to what costs

it incurred pursuant to the joint activity, or

(C) If neither of the foregoing is available, a statement from the U.S. industry or State agency as to what goods and services it provided, or

(D) If none of the foregoing are available, a memo to the files of the MAP Participant's estimate of what contribution or cost share was made by the U.S. industry or State agency, item by item, and the method used to assign a value to each.

(ii) The documentation required in paragraph (e)(7)(i) of this section must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution or cost share, who conducted the activity, the participating groups or individuals, and the method of computing the claimed contribution or cost share. MAP Participants must retain and make available for compliance reviews and audits documentation related to claimed contribution or cost share.

(f) Upon request, a MAP Participant shall provide documents supporting reimbursement claims to CCC. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1485.22 Reports.

(a) Participants are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for the required financial and performance reports will be specified in the agreement between CCC and the Participant.

(b)(1) In addition to the information required in 2 CFR 200.329(c)(2), a Participant's performance reports must include pertinent information regarding the Participant's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Participant must provide an explanation in the report.

(2) A Participant must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Participant's performance data to determine whether it is accurate and reliable. The Participant must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(c) All final performance reports will be made available to the public.

(d) Not later than 45 calendar days after the completion of travel (other than local travel), a MAP Participant shall submit a trip report. The report must be submitted to the appropriate Attaché/Counselor(s) and must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(e) Not later than 90 calendar days after the end of its program year, a MAP Participant shall submit a report on any research conducted pursuant to the approved MAP program.

(f) If requested by FAS, a Participant must provide to FAS additional information or reports relating to the agreement.

(g) If a Participant requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.23 Evaluation.

(a)(1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515,

9703–9704) requires performance measurement of Federal programs, including the MAP. Evaluation of the MAP's effectiveness will depend on a clear statement by Participants of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the MAP and of individual Participants' programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a MAP Participant's program, contribute to program accountability, and provide evidence of program effectiveness.

(b) When required by CCC, a MAP Participant shall complete a program evaluation. A program evaluation is a review of the MAP Participant's entire program, or an appropriate portion of the program as agreed to by the MAP Participant and CCC, to determine the effectiveness of the MAP Participant's strategy in meeting specified goals. The actual scope and timing of the program evaluation shall be determined by the MAP Participant and CCC and specified in the approval letter. A MAP Participant may contract with an independent evaluator to satisfy this requirement, although CCC reserves the right to have direct input and control over the design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator. A MAP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation. In addition to the requirements set forth in 2 CFR part 200, a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The scope of the evaluation;

(3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;

(4) A description of the evaluation methodology;

(5) A description of additional export sales achieved, including the ratio of additional export sales in relation to the MAP Participant's program funding received;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(c) MAP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved MAP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program year.

(d) On an annual basis, or more often when appropriate or required by CCC, a MAP Participant shall complete and submit program success stories. CCC will announce to all MAP Participants the detailed requirements for completing and submitting program success stories.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.24 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of the Participant's activities under this program to ensure compliance with this subpart, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(b) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(c) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Participant. The compliance report will detail any instances where it appears that the Participant is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Participant and will explain the basis for any recovery of funds from the Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the program, CCC may require the Participant to contract for an independent audit.

(d) In addition, CCC may notify a Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The Participant shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Participant notifies CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to the provisions of this subpart, the amount owed to CCC by the Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(e) The fact that a compliance review has been conducted by USDA staff does not signify that a Participant is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(f) For a Participant response to compliance report:

(1) A Participant shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Participant does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Participant shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Participant owes any funds to CCC and will inform the Participant in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to debt settlement policies and procedures, 7 CFR part 1403.

(g) For Participant appeals of CCC determinations:

(1) Within 30 calendar days of the date of the issuance of a determination, the Participant may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Participant may also request a hearing.

(2) If the Participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1485.25 Failure to make required contribution or cost share.

A MAP Participant's required contribution or cost share will be specified in the approval letter. If the MAP Participant's required contribution or cost share is specified as a dollar amount

and the MAP Participant does not make the required contribution or cost share, the MAP Participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the MAP Participant's required contribution or cost share is specified as a percentage of the total amount reimbursed by CCC, the MAP Participant may either return to CCC the necessary amount of funds reimbursed by CCC to increase its actual contribution or cost share percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution or cost share percentage to the required level. A MAP Participant shall remit such payment within six months after the end of its program year. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.26 Submissions.

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by CCC.

§ 1485.27 Disclosure of program information.

(a) Documents submitted to CCC by MAP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A, and specifically 7 CFR 1.12.

(b) Upon request, a Participant shall provide to any person a copy of any document in its possession or control containing market information developed and produced under the terms of its agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) Any research conducted by a MAP Participant pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1485.28 Ethical conduct.

(a) A MAP Participant shall conduct its business in accordance with the laws and regulations of the country(s) in which an activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A MAP Participant shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a MAP Participant nor its affiliates shall make export sales of eligible commodities covered under the terms of the applicable MAP agreement. Nor shall such entities charge a fee for facilitating an export sale. A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant's organization.

(c) A MAP Participant shall not limit participation in its MAP activities to members of its organization. Participants shall ensure that their MAP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The MAP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its MAP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials. This paragraph does not apply to U.S. agricultural cooperatives when implementing their own brand program.

(d) A MAP Participant shall select U.S. agricultural industry representatives to participate in generic MAP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a MAP Participant shall submit such selection criteria to CCC for approval.

(e) All MAP Participants should endeavor to ensure fair and accurate fact-

based advertising. Deceptive or misleading promotions may result in cancellation or termination of a MAP Participant's agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The MAP Participant must report any actions or circumstances that may have a bearing on the propriety of its MAP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to CCC.

§ 1485.29 Subawarding procedures.

(a) MAP Participants have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the MAP Participant. Neither CCC nor any other agency of the U.S. Government nor any official or employee of CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to MAP Participant contracts with third parties.

(b) A MAP Participant shall comply with the procurement standards set forth below and in 2 CFR part 200 when procuring goods and services and when engaging in construction to implement agreements.

(c) Each MAP Participant shall establish open, fair, and competitive contracting procedures for contracts that are funded, in whole or in part, with MAP funds.

(d) Each MAP Participant shall submit to CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with MAP funds. CCC will notify all new and existing MAP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. CCC's approval of such contracting guidelines will remain in place until CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by CCC, these contracting guidelines shall govern all of a Participant's MAP-funded contracting involving contracts with an annual minimum value that CCC shall determine and announce in writing to all MAP Participants via a program notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The MAP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict of interest provision that states that no employee, officer, board member, or agent thereof of the MAP Participant will participate in the review, selection, award, or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of these parties or their affiliates has a financial or other interest in the contract. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members, or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; sole

source contracts; solicitations that yield receipt of three or more bids; or solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. MAP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for market representation are not required to be re-competed after the initial reward. Instead, the performance of market representation must be evaluated and documented by the MAP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the MAP Participant.

(e) A MAP Participant may undertake MAP promotional activities directly or through a domestic or foreign subrecipient. However, the MAP Participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such subrecipient and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC in relation to such subrecipient's promotional activities and expenditures.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.30 Property standards.

(a) A Participant shall maintain an inventory of all personal property having a useful life of more than one year and an acquisition cost of $500 or more that was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements, as applicable.

(b) The Participant shall insure all real property and equipment that was acquired, in whole or in part, with MAP funds at a level minimally equal to the equivalent insurance coverage for property owned by the Participant. The Participant shall safeguard such property and equipment against theft, damage, and unauthorized use. The Participant shall promptly report any loss, theft, or damage of such property and equipment to the insurance company.

(c) Personal property having a useful life of more than one year and an acquisition cost of $500 or more purchased by the Participant, and for which the Participant is reimbursed, in whole or in part, with MAP funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Participant may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With CCC approval, transfer the property to other Participants for their activities, or to a foreign entity; or

(3) Upon Attaché/Counselor approval, donate the property to a local charity, or convey the property to the Attaché/Counselor, along with an itemized inventory list and any documents of title.

(d) The Participant is responsible for reimbursing CCC for the value of any uninsured property at the time of the loss or theft of the property.

§ 1485.31 Anti-fraud requirements.

(a) *All MAP Participants.* (1) All MAP Participants annually shall submit to CCC for approval a detailed fraud prevention program. CCC will notify all new and existing MAP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. MAP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The MAP Participant shall not conduct or permit any MAP promotion activities to occur unless and until CCC has communicated in writing approval of the MAP Participant's fraud prevention program.

(2) The MAP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's agreement and/or approval letter. The MAP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by CCC or USDA to the MAP Participant for the prompt investigation of such allegation or occurrence.

(b) *MAP Participants with brand programs.* (1) The MAP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The MAP Participant shall repay to CCC funds paid to a brand participant through the MAP Participant on claims that the MAP Participant or CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 calendar days of the MAP Participant's determination or CCC's disallowance. The MAP Participant shall repay CCC by submitting a check to CCC or by offsetting the MAP Participant's next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A MAP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for MAP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees, or agents, unless CCC determines that the MAP Participant was grossly negligent in the operation of the brand program regarding such claims. CCC shall communicate any such determination to the MAP Participant in writing.

§ 1485.32 Program income.

Program income is gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any income generated from an activity, the expenditures for which have been wholly or partially reimbursed with MAP funds, shall be used by the MAP Participant in furtherance of its approved MAP activities in the program year during which the MAP funds are available for obligation by the MAP Participant, or must be returned to CCC. The use of such income shall be governed by this subpart. Interest earned on funds advanced by CCC is not program income. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for approved activities. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to FAS. Such fees may not be used as profit or counted as contribution or cost share.

§ 1485.33 Amendments.

An agreement may be amended in writing with the consent of CCC and the MAP Participant. All requests for

program amendments must be submitted to CCC in writing and contain a justification for why the amendment is necessary. All amendment requests must be reviewed and approved by CCC before an amendment can be issued.

§ 1485.34 Subrecipients.

(a) A Participant may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Participant for this purpose. The Participant must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.332 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Participant must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Participant must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Participant the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A Participant must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.35 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Participants and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Participant or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Participant or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Participant or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs

(d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Participant or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Participant or subrecipient that is a for-profit entity or a subrecipiet that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Participants or subrecipients, including for-profit entities and foreign organizations. Participants and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1485.36 Suspension and termination of agreements.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.339 or 200.340. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.339 or 200.340 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Participant:

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.344 and 200.345.

[85 FR 1732, Jan. 13, 2020, as amended at 86 FR 68884, Dec. 6, 2021]

§ 1485.37 Noncompliance with an agreement.

(a) If a MAP Participant fails to comply with any term in its agreement or approval letter, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the MAP Participant, following the procedures set forth in this subpart. CCC may also initiate a claim against a MAP Participant if program income or CCC-provided funds are lost due to an action or omission of the MAP Participant. If any MAP Participant has engaged in fraud with respect to the MAP, or has otherwise violated program requirements under this subpart, CCC may:

(1) Hold such MAP Participant liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such MAP Participant plus interest as determined by FAS; and

(3) Collect liquidated damages from such MAP Participant in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

§ 1485.38 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this subpart have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0026 for this information collection.

PART 1486—EMERGING MARKETS PROGRAM

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AUTHORITY: 7 U.S.C. 5623, 5662–5663.

SOURCE: 84 FR 69986, Dec. 20, 2019, unless otherwise noted.

Subpart A—General Information

§ 1486.100 General purpose and scope.

(a) The E (Kika) de la Garza Emerging Markets Program (EMP) is established to develop, maintain, or expand markets for exports of United States agricultural commodities and to promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and emerging markets. While the program is primarily intended to support the export market development efforts of the private sector, the program's resources may also be used to assist public agricultural organizations.

(b) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the EMP.

(c)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the EMP.

(3) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, IV, also apply to the EMP, to the extent that these regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC also apply to the EMP.

(d) Under the EMP, CCC provides grants to eligible U.S. private or government entities who demonstrate a role or interest in the export of U.S. agricultural commodities to conduct assessments of food and rural business system needs of emerging markets, make recommendations on measures necessary to enhance the effectiveness of such systems, including potential reductions in trade barriers, and identify and carry out specific opportunities and projects to enhance the effectiveness of such systems. The EMP may only be used to support exports of U.S. agricultural commodities through generic activities.

(e) Only initiatives that support the export of U.S. agricultural commodities are eligible for assistance under the program. The program's resources may not be used to support the export of another country's products to the United States or another country, or to promote the development of a foreign economy as a primary objective.

(f) The EMP generally operates on a reimbursement basis. The program is administered by the Foreign Agricultural Service (FAS) acting on behalf of CCC.

(g) EMP recipients are responsible for complying with all applicable laws and regulations.

§ 1486.101 Definitions.

For purposes of this part, the following definitions apply:

Activities means components of a project that carries out one or more statutorily-authorized activities, *e.g.*, activities that assess the food and rural business system needs of emerging markets; promote information exchange with such markets; and/or carry out recommendations, projects, and opportunities in emerging markets to enhance the effectiveness of such systems.

Agreement means a legally binding grant entered into between CCC and an EMP applicant setting forth the terms and conditions of approved activities under the EMP, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its EMP proposal has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement.

Attaché/Counselor means the FAS employee representing United States Department of Agriculture interests in a foreign country.

Cost share means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). In terms of the EMP program, cost share is the funds provided by the Recipient, the U.S. industry, or a State agency in support of an approved activity.

Emerging market means generally any country, foreign territory, customs union, or other economic market that CCC determines is taking steps toward a market-oriented economy through its food, agriculture, or rural business sectors of the economy and has the potential to provide a viable and significant market for U.S. agricultural commodities. CCC has determined that any country that is not designated as a high-income country by the World Bank is an eligible emerging market under this program. The World Bank periodically redefines the income limits for its country classification. Consequently, the list of ''emerging market'' countries may change over time. CCC will provide guidance on country eligibility in each program announcement.

Generic activities mean an activity that does not involve or promote the exclusive or predominant use of an individual company name, logo, or brand name, or the brand of a U.S. agricultural cooperative, but rather promotes a U.S. agricultural commodity generally.

Project means an approach or undertaking made up of one or more activities that, taken together, carries out one or more statutorily-authorized activities under the EMP (*e.g.*, activities that assess the food and rural business system needs of emerging markets and develop recommendations on measures necessary to enhance the effectiveness of such systems; promote information exchange with such markets; or identify and carry out specific recommendations, opportunities, or projects to enhance the effectiveness of such systems).

Project funds means the funds made available to a Recipient by CCC under an agreement and authorized for expenditure in accordance with this part.

Proposal means an application for funding.

Recipient means a U.S. entity receiving financial assistance from CCC to carry out a project under the EMP.

SRTG is the acronym for State Regional Trade Group. An STRG is a nonprofit association of state-funded agricultural promotion agencies.

STRE is the acronym for sales and trade relations expenditures. Expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Unified Export Strategy (UES) system means an online internet system maintained by FAS through which applicants may apply to the EMP and other FAS market development programs. The system is currently accessible at *https://apps.fas.usda.gov/ues/webapp/*. FAS may prescribe a different system

through which applicants may apply to EMP and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in Title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

§ 1486.102 Regional projects.

Projects that focus on regions, such as the Caribbean Basin, rather than individual countries are eligible for consideration provided such projects target qualifying emerging markets in the specified region. CCC may also consider activities that target qualified emerging markets in a specific region but are conducted in a non-emerging market because of its importance as a central location and ease of access to that region.

Subpart B—Eligibility, Applications, and Funding

§ 1486.200 Participation eligibility.

(a) To participate in the EMP, U.S. private or government entities must demonstrate a role or interest in the exports of U.S. agricultural commodities. Government organizations consist of Federal, state, and local agencies. Private entities include non-profit trade associations, universities, agricultural cooperatives, SRTGs, consulting businesses, research institutions, and profit-making entities. Foreign organizations, whether government or private, may participate as subrecipients in activities carried out by U.S. entities, but are not eligible for direct funding assistance from the program.

(b) Proposals from research and consulting entities will be considered for funding assistance only with evidence of substantial participation in and financial support to the proposed project by U.S. industry. Such support is most credibly demonstrated through actual monetary contributions to the cost of the project.

(c) For-profit entities shall not use program funds to conduct private business, promote private self-interests, or promote their own products or services beyond specific uses approved in a given project. For-profit entities shall not use program funds to supplement the costs of normal day-to-day operations.

§ 1486.201 Eligible commodities.

Any agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States is eligible for funding. Projects that seek support for multiple commodities are also eligible.

§ 1486.202 Application process.

(a) *Announcement of accepting EMP applicants.* CCC will periodically announce that it is accepting applications for participation in the EMP. All relevant information, including application deadlines and proposal content, will be noted in the announcement, and proposals must be submitted in accordance with the terms and requirements specified in the announcement and in this part. Currently, applicants are encouraged to submit applications through the UES system but are not required to do so. CCC may request any additional information it deems necessary from any applicant in order to properly evaluate any proposal.

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the EMP and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that

applies to the EMP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive EMP funding.

§ 1486.203 Application review and formation of agreements.

(a) *General.* Proposals received in accordance with the announcement and this part will undergo a multi-phase review by CCC to determine eligibility for the program, the qualifications, quality, and appropriateness of proposed projects, and the reasonableness of proposed project budgets.

(b) *Evaluation criteria.* CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. All proposals that meet the eligibility and completeness criteria described in the NOFO and receive a passing score will be recommended for funding to the FAS Administrator. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. Demonstration of substantial U.S. industry participation in or financial or other support of a proposal will be a positive factor in the consideration of proposals. The degree of commitment to a proposed project, represented by the amount and type of cost share, is used in determining which proposals will be approved. Proposals in which the private sector is willing to commit funds, rather than in-kind items such as staff resources, and those with higher amounts of cost share will be given priority consideration. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(c) *Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in the announcement and this part. All decisions regarding the disposition of an application are final.

§ 1486.204 Funding limits.

(a) The EMP is a relatively small program intended to develop, maintain, or expand access to qualified emerging markets. Its funds are intended for focused projects with specific activities, rather than expansive concept papers that contain only broad ideas. Large, overly expensive projects (*i.e.,* in excess of $500,000) will not be funded.

(b) CCC will not reimburse 100 percent of the cost of any project undertaken by the private sector. The program is intended to provide appropriate assistance to projects that have significant financial contributions from other sources, especially U.S. private industry.

(c) Proposals for projects exceeding one year in duration may be considered, but proposals for projects that last longer than five years will not be considered. If approved, funding for multi-year projects may be provided one year at a time, with commitments beyond the first-year subject to interim evaluations intended to assess the progress of the project toward meeting its intended objectives.

(d) Funding for continuing and substantially similar projects is generally limited to three calendar years, although FAS will entertain requests to extend an agreement's expiration date up to a maximum of five calendar years. After that time, the project is assumed to have proven its viability and, if necessary, should be continued by the Recipient with its own or with alternative sources of funding. Recipients must submit in writing a valid justification for why an extension is necessary no later than 60 days before the end of the period of performance. If warranted, extensions generally will be granted in one-year increments. Recipients must wait for written approval from FAS before proceeding with the project.

Subpart C—Program Operations

§ 1486.300 Applicant notification.

(a) CCC will notify each applicant in writing of the final decision on its application. CCC will send an agreement and an approval letter to each approved applicant. An applicant that accepts the terms and conditions contained in the agreement must so indicate by having the appropriate authorizing official sign the agreement and return it to CCC. The applicant may not begin to implement approved activities until the applicant's authorizing official and CCC have signed the agreement. The applicant is authorized to begin implementation of the project as of the date specified in the approval letter, unless otherwise indicated.

(b) The approval letter and agreement will outline the activities and budgets that are approved and will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share requirements.

§ 1486.301 Amendments.

(a) Recipients may request to modify approved projects if circumstances change in such a way that they would likely affect the progress and ultimate success of a project. Such modification must be made through a written amendment to the agreement. All requests for project modifications must be made in writing to CCC and must include:

(1) A justification as to why changes to the project as originally designed are needed;

(2) An explanation of the necessary adjustments in approach or strategy; and

(3) A description of necessary changes in the project's time line(s) and/or budget (*e.g.*, shifting of budgetary resources from one-line item to another in order to accommodate the changes).

(b) All requests for project modifications must be reviewed and approved by CCC. Upon approval, CCC will issue an amendment to the agreement, which must be signed by CCC and the Recipient.

§ 1486.302 Subrecipients.

(a) A Recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Recipient for this purpose. The Recipient must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Recipient must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Recipient must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400 and/or the FAR, if applicable. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Recipient the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include preaward audits, monitoring during the agreement, and post-award audits.

(c) A Recipient must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and

program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

(d) Recipients have full and sole responsibility for the legal sufficiency of all subawards they may enter into with one or more subrecipients in order to carry out an approved project and shall assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on subawards entered into by the Recipient. Neither CCC nor any other agency of the United States Government nor any official or employee of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Recipient subawards with third parties.

(e) Recipients are responsible for ensuring to the greatest extent possible that the terms, conditions, and costs of subawards constitute the most economical and effective use of project funds.

(f) All fees for professional and technical services paid to subrecipients in any part with project funds must be covered by written subawards.

(g) A Recipient shall:

(1) Ensure that all expenditures for goods and services in excess of $25 reimbursed by CCC are documented by a purchase order or invoice;

(2) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, participates in the review, selection, award or administration of a subaward in which such entities or their affiliates have a financial or other interest;

(3) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned shall be excluded from competition for such procurement;

(4) Conduct all awarding of grants and agreements in an openly competitive manner, except under the following conditions:

(i) Non-monetary awards of property or services;

(ii) Awards of less than $75,000;

(iii) Awards to fund continuing work already started under a previous award;

(iv) Awards that cannot be delayed due to an emergency or a substantial danger to health or safety;

(v) Awards when it is impracticable to secure competition; or

(vi) Awards to fund unique and innovative unsolicited applications;

(5) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;

(6) Perform and document some form of fee, price, or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered fees or prices for procurements in excess of the simplified acquisition threshold defined at 2 CFR 200.88; and

(7) Document the decision-making process.

Subpart D—Cost Share and Reimbursements

§ 1486.400 Cost share.

(a) The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. Therefore, no private sector proposal will be considered without the element of cost share from the Recipient and/or U.S. partners.

(b) There is no minimum or maximum required amount of cost share. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used as one factor in determining which proposals will be approved. The type of cost share is also not specified, though some contributions are ineligible (see § 1486.402). Cost share may be actual cash invested or professional time of staff assigned to the project.

Proposals in which the private sector is willing to commit funds, rather than in-kind items such as staff resources, and those with higher amounts of cost share will be given priority consideration.

(c) Cost share is not required for proposals from Federal, state, or local government agencies. It is mandatory from all other eligible entities, even when they are party to a joint proposal with a government agency.

(d) Contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement but may be included in the total cost of the project.

(e) An activity that is undertaken by an entity at the request of FAS may be exempted from the cost share requirement. This determination is made at the discretion of FAS.

(f) A Recipient's cost share requirement will be specified in the agreement and approval letter. If a Recipient fails to contribute the total specified in the agreement, the difference between the amount contributed and the total amount required must be repaid to CCC in U.S. dollars within six months after the end of the period of performance of the agreement. If a Recipient is reimbursed by CCC for less than the amount of funds approved in the agreement, then the final required cost share shall equal, on a percentage basis, the original ratio of cost share to the authorized EMP funding level.

§ 1486.401 Eligible cost share.

(a) In calculating the amount of cost share that it will make and the cost share U.S. entities or a State or local agency will make, a Recipient may include those costs (or such prorated costs) not proscribed under § 1486.402 if:

(1) The expenditures are necessary and reasonable for accomplishment of the Recipient's overall EMP;

(2) The expenditures are not included as cost share for any other Federal award;

(3) The expenditures are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(4) The cost share is made during the period covered by the agreement.

(b) Cost share must be included in a project's line item budget.

§ 1486.402 Ineligible cost share.

(a) The following are not eligible as cost share:

(1) Normal operating expenses and other costs not directly related to the project;

(2) Any portion of salary or compensation of an individual who is the target of an approved project activity;

(3) The cost of insuring articles owned by private individuals;

(4) The cost of product development, product modification, or product research;

(5) Slotting fees or similar sales expenditures;

(6) Funds, services, capital goods, or personnel provided by any U.S. Government agency;

(7) The value of any services generated by a Recipient or a third party that involve no expenditure by the Recipient or third party, *e.g.*, free publicity;

(8) The cost of developing any application/proposal for EMP funding;

(9) Membership fees in clubs and social organizations; and

(10) Any expenditure for an activity prior to CCC's approval of that activity.

(b) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included as an eligible cost share.

§ 1486.403 Reimbursement rules.

(a) A Recipient may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the performance of an approved activity; and

(2) The Recipient has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section, as well as applicable cost principles in 2 CFR part 200, to the extent these principles do not directly conflict with the provisions of this part, CCC will reimburse, in whole or in part, the cost of:

(1) Salaries and benefits of the Recipient's existing personnel or any other participating entity that are directly assigned to EMP-funded projects. Salaries of administrative and clerical staff should normally be treated as indirect costs. Federal, state, and local government Recipients may not be reimbursed for salaries and benefits. Reimbursement of salaries and benefits for other Recipients is limited to:

(i) The actual daily rate paid by the Recipient for the employee's salary or the daily rate of a GS-15, Step 10 U.S. Government employee in effect during the calendar year in which the project or activity is approved for funding, whichever is less;

(ii) The actual assigned time of the employee to the project; and

(iii) Benefits at a maximum rate of 30 percent of the existing salary of the employee, prorated to the time assigned to the project, provided that such benefits are required and granted pursuant to the Recipient's established written policies.

(2) Consulting fees for professional services, limited to the daily rate of a GS-15, Step 10 U.S. Government employee in effect during the calendar year in which the project or activity is approved for funding. Reimbursement is authorized only for actual days worked and is not authorized for travel and rest days. Benefits are not reimbursable.

(3) STRE for social events or receptions that are primarily attended by foreign officials and that are held at foreign venues and are part of an approved activity. Such expenses must conform to the American Embassy representational funding guidelines as the standard for judging the appropriateness of the STRE costs. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. Recipients must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. STRE incurred in the United States is not authorized for reimbursement but may be counted as a cost share to the project.

(4) Travel expenses, subject to the following:

(i) All expenses while in travel status must conform to the U.S. Federal Travel Regulations (41 CFR parts 300 through 304);

(ii) Air travel must comply with the Fly America Act (49 U.S.C. App. 1517) and is limited to the full-fare economy class rate;

(iii) Per diem is limited to the allowable rate for each domestic or foreign locale (41 CFR part 301–11). Expenses in excess of the authorized per diem rates may be allowed in special or unusual circumstances (41 CFR part 301–11), but must be approved in advance; and

(iv) The Recipient shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel by the Recipient or its consultants or other Recipients. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

(5) Direct administrative costs.

(6) Indirect costs not identified as direct costs, but which are necessary for the implementation of a project. Indirect costs must be specified to be eligible for reimbursement. Indirect costs may be reimbursed up to a maximum of 10 percent of the EMP-funded portion of the project budget, excluding indirect costs, except that Recipients in FAS' Market Access Program and the Foreign Market Development Cooperator Program, SRTGs, for-profit entities, and government Recipients may not be reimbursed for indirect costs.

(7) Rental costs for equipment necessary to carry out approved projects. Equipment rentals must be returned by the Recipient to the supplier in accordance with the lease agreements, but in no case later than 90 calendar days from the completion date of the project.

(8) Procuring samples of specific agricultural commodities that are appropriate and necessary to the success of a technical assistance activity.

§ 1486.404 Ineligible expenditures.

(a) CCC will not reimburse expenditures made prior to approval of a Recipient's proposal, unreasonable expenditures, or any cost of:

(1) Branded product promotions, *e.g.*, in-store promotions, restaurant advertising, labeling, etc.;

(2) Administrative and operational expenses for trade shows;

(3) Advertising;

(4) Preparation and printing of magazines, brochures, flyers, posters, etc., except in connection with specific approved activities such as training;

(5) Design, development, and maintenance of information technology projects;

(6) Purchase of equipment, *e.g.*, office equipment or other fixed assets;

(7) Subsidizing or otherwise providing funds for graduate programs at colleges and/or universities (salaries or fees for individual students who are directly assigned to specific project activities appropriate to their backgrounds may be covered on a pro-rated basis);

(8) Subsidizing normal, day-to-day operating costs of an entity, except as allowed under § 1486.403(b)(6);

(9) Honoraria for speakers;

(10) Costs of product research or new product development;

(11) Costs of developing technical assistance proposals submitted to the program;

(12) Refundable deposits or advances;

(13) STRE expenses within the United States;

(14) All costs related to the shipping, over land and sea, of commodity samples;

(15) Expenses, fines, settlements, judgments, or payments relating to legal suits, challenges, or disputes, including legal fees and costs associated with trade disputes, except as otherwise allowed in 2 CFR part 200;

(16) Real estate costs other than allowable rental costs for office space whose use is assigned specifically to a project funded by the EMP; and

(17) Any expenditure that has been or will be reimbursed by any other source.

(b) CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§ 1486.405 Reimbursement procedures.

(a) Following the implementation of a project for which CCC has agreed to provide funding, a Recipient may submit claims for reimbursement of eligible expenses incurred in implementing an EMP project, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Recipient will be reimbursed after CCC reviews the claim and determines that it is complete.

(b) CCC will make all payments to the Recipients in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(c) Recipients will be authorized to submit requests for reimbursements or advances at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(d) Recipients may submit claims for reimbursement of the expenses incurred in implementing EMP projects, to the extent CCC has agreed to pay for such costs, limited initially to 85 percent of the total amount specified in the agreement. The Recipient may be reimbursed for the remaining 15 percent of the funds only after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(e) Final claims for reimbursement must be received no later than 90 calendar days after the completion date of the project or following the expiration or termination date of the agreement, whichever is sooner, and are subject to FAS approval of the Recipient's final performance report. Recipients are required to use a prescribed system to submit their claims. This system will be clearly stated in the NOFO. Currently the CCC's internet-based UES system is being used to request reimbursement for eligible EMP program expenses.

(f) Recipients shall maintain complete records of all program expenditures, identified by EMP agreement

number, program year, country or region, activity number, and cost category. Such records shall be accompanied by documentation that supports the expenditure and shall be made available to CCC upon request. CCC may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(g) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the Recipient shall repay CCC within 30 calendar days of such overpayment or disallowance the amount overpaid or disallowed either by submitting a check payable to CCC and referencing the applicable project, or by offsetting its next reimbursement claim. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The Recipient shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and FAS Division Director.

§ 1486.406 Advances.

(a) *Policy*. In general, CCC operates the EMP on a cost reimbursable basis.

(b) *Exception*. Upon request, CCC may make advance payments to a Recipient against an approved project budget. Up to 40 percent of the approved project budget may be provided as an advance, either at one time or in incremental payments. Advances should be limited to the minimum amounts needed and requested as close as is administratively feasible to the actual time of disbursement by the Recipient. Reimbursement claims will be used to offset advances. Recipients shall deposit and maintain advances in insured, interest-bearing accounts, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Recipient on funds advanced by CCC is not program income. Up to $500 of interest earned per year may be retained by the Recipient for administrative expenses. Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(c) *Refunds due CCC*. A Recipient shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of 90 calendar days, the Recipient must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

Subpart E—Reporting, Evaluation, and Compliance

§ 1486.500 Reports.

(a) Recipients are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for both annual financial and performance reports and final financial and performance reports will be specified in the agreement between CCC and the Recipient.

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Recipient's performance reports must include pertinent information regarding the Recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Recipient must provide an explanation in the report.

(2) A Recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Recipient's performance data to determine whether it is accurate and reliable. The Recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(c) All final performance reports will be made available to the public.

(d) If requested by FAS, a Recipient must provide to FAS additional information or reports relating to the agreement.

(e) If a Recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

§ 1486.501 Evaluation.

Project evaluations may be carried out by CCC at its option with or without Recipients. CCC may also seek outside expertise to conduct or participate in evaluations.

§ 1486.502 Compliance reviews and notices.

(a) *Compliance review process.* (1) USDA staff may conduct compliance reviews of Recipient's activities under the EMP to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Recipients shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(2) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(3) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Recipient. The compliance report will detail any instances where it appears that the Recipient is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Recipient and will explain the basis for any recovery of funds from the Recipient. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the EMP, CCC may require the Recipient to contract for an independent audit.

(4) In addition, CCC may notify a Recipient in writing at any time if CCC determines that CCC may be entitled to recover funds from the Recipient. CCC will explain the basis for any recovery of funds from the Recipient in the written notice. The Recipient shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Recipient shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Recipient notifies CCC within 30 calendar days of the date of the written notice that the Recipient intends to file an appeal pursuant to the provisions of this part, the amount owed to CCC by the Recipient is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(5) The fact that a compliance review has been conducted by USDA staff does not signify that a Recipient is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(b) *Recipient response to compliance report.* (1) A Recipient shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Recipient does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Recipient shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Recipient owes any funds to CCC and will inform the Recipient in writing of the basis for the determination. CCC may initiate

action to collect such amount by providing the Recipient a written demand for payment of the debt pursuant to the debt settlement policies and procedures in 7 CFR part 1403.

(c) *Recipient appeals of CCC determinations.* (1) Within 30 calendar days of the date of the issuance of a determination, the Recipient may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Recipient may also request a hearing.

(2) If the Recipient requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Recipient bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1486.503 Records retention.

Each Recipient shall retain all records relating to the project for three calendar years from the date of submission of the final expenditure report. All records related to the project, including records pertaining to contractors, shall be made available upon request to authorized officials of the U.S. Government.

§ 1486.504 Program income.

Program income means gross income earned by the Recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any such income generated from an activity, the expenditures for which have been wholly or partially reimbursed with EMP funds, shall be used by the Recipient in furtherance of its approved activities in the program period during which the EMP funds are available for obligation by the Recipient, or must be returned to CCC. The use of such income shall be governed by this part. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to CCC. Such fees may not be used as profit or counted as cost share.

§ 1486.505 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Recipient or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Recipient or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Recipient or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward

when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Recipient or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1486.506 Disclosure of program information.

(a) Documents submitted to CCC by Recipients are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and 7 CFR part 1, subpart A, including, specifically, 7 CFR 1.11.

(b) Any research conducted by a Recipient pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1486.507 Ethical conduct.

(a) The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

(b) A Recipient shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Recipient shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(c) Neither a Recipient nor its affiliates shall make export sales of U.S. agricultural commodities covered under the terms of an agreement. Neither a Recipient nor its affiliates shall charge a fee for facilitating an export sale. A Recipient may collect check-off funds and membership fees that are required for membership in the Recipient's organization.

(d) The Recipient shall not use program activities or project funds to promote private self-interests or conduct private business.

(e) A Recipient shall not limit participation in its EMP activities to members of its organization. Recipients shall ensure that their EMP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors.

(f) A Recipient shall select U.S. agricultural industry representatives to participate in activities based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a Recipient shall submit such selection criteria to CCC for approval.

(g) The Recipient must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Recipient's U.S. office shall report such actions or circumstances in writing to CCC.

(h) The officers, employees, board members, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, sub-contractors, or parties to sub-agreements. However, Recipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members, or agents of the Recipient.

§ 1486.508 Suspension and termination.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS

may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Recipient:

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post–closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1486.509 Noncompliance with an agreement.

(a) If a Recipient fails to comply with any term in its agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Recipient, following the procedures set forth in this part. CCC may also initiate a claim against a Recipient if program income or CCC-provided funds are lost due to an action or omission of the Recipient. If any Recipient has engaged in fraud with respect to the EMP program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Recipient liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Recipient plus interest as determined by FAS; and

(3) Collect liquidated damages from such Recipient in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

§ 1486.510 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0048 for this information collection.

PART 1487—TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

Sec.

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AUTHORITY: 7 U.S.C. 5623, 5662–5663, as amended.

SOURCE: 84 FR 70394, Dec. 23, 2019, unless otherwise noted.

§ 1487.1 General purpose and scope.

(a) Under the Technical Assistance for Specialty Crops (TASC) program, the Commodity Credit Corporation (CCC), an agency and instrumentality of the United States within the U.S. Department of Agriculture (USDA), provides grant funds to eligible organizations to implement activities that are intended to address existing or potential sanitary, phytosanitary, or technical barriers that prohibit or threaten the export of U.S. specialty crops that are currently available on a commercial basis. The TASC program is intended to benefit the represented industry rather than a specific company or brand.

(b) This part sets forth the general terms, conditions, and policies governing CCC's operation of the TASC program.

(c)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR

part 200. In 2 CFR 400.1, the U.S. Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the TASC program.

(3) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the TASC program, to the extent that these regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions or regulatory provisions that are generally applicable to CCC also apply to the TASC program.

(d) The TASC program generally operates on a reimbursement basis. The program is administered by the Foreign Agricultural Service (FAS), acting on behalf of CCC.

§ 1487.2 Definitions.

For purposes of this part, the following definitions apply:

Activity means a discrete undertaking within a project to be carried out by a Participant, directly or through a subrecipient or contractor, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant entered into between CCC and a TASC applicant setting forth the terms and conditions to implement an approved project under the TASC program, including any subsequent amendments to such agreement.

Approval letter means a document by which CCC informs an applicant that its TASC proposal has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the agreement.

Attaché/Counselor means the FAS employee representing United States Department of Agriculture interests in a foreign country.

Eligible organization means any U.S. organization that demonstrates a role or interest in the exports of specialty crops, including, but not limited to: U.S. Government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

Participant means an entity that has entered into a TASC agreement with CCC.

Specialty crop means most cultivated plants produced in the United States, or the products thereof, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

Unified Export Strategy (UES) system means the online internet system maintained by FAS through which applicants currently may apply to TASC and the other FAS market development programs. The system is currently accessible at *https://apps.fas.usda.gov/ues/webapp/*. FAS may prescribe a different system through which applicants may apply to TASC and will announce such system in the applicable Notice of Funding Opportunity (NOFO).

United States means each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 1487.3 Program eligibility.

(a) An eligible organization can submit an application under this part to become a Participant under the TASC Program. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable NOFO posted on the U.S. Government website for grant opportunities.

(b) In order to be eligible for funding under the TASC program, activities must address existing or potential sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops. Examples of expenses that CCC may agree to cover under the TASC program include but are not limited to expenses associated with: Initial pre-

clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

(c) Eligible projects may take place in the United States or abroad.

(d) Proposals from research and consulting entities will be considered for funding assistance only with evidence of substantial participation in and financial support to the proposed project by U.S. industry. Such support is most credibly demonstrated through actual monetary contributions to the cost of the project.

(e) Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. entities, but are not eligible for funding assistance from the program.

§ 1487.4 Limits on the scope of proposals.

(a) *Funding cap.* Proposals that request more than $500,000 of CCC funding in a given year will not be considered.

(b) *Length of activities.* Awards will generally be granted for a project period not exceeding five calendar years. However, FAS will entertain requests to extend agreements beyond five years when valid justifications are submitted. Participants must submit in writing a valid justification for why an extension is necessary no later than 60 days before the end of the period of performance. Extensions generally will be granted in one-year increments, if warranted. A Participant must wait for written approval from FAS before proceeding with the project.

(c) *Target countries.* Proposals may target barriers in any eligible export market, including single countries or reasonable regional groupings of countries.

(d) *Multiple proposals.* Applicants may submit multiple proposals, but no Participant may have more than five approved projects underway at any given time.

(e) *Program funds only for specific uses.* Participants shall not use program funds to supplement the costs of normal day-to-day operations or to promote their own products or services beyond specific uses approved in a given project.

§ 1487.5 Application process.

(a) *Announcement for TASC program participant.* CCC will periodically announce that it is accepting applications for participation in the TASC program. All relevant information, including application deadlines and proposal content, will be noted in the announcement, and proposals must be submitted in accordance with the terms and conditions, as well as other requirements specified in the announcement and in this part. Currently, applicants are encouraged to submit applications through the UES system, but are not required to use the UES system. CCC may request any additional information it deems necessary from any applicant in order to properly evaluate any proposal

(b) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the TASC program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its DUNS number, or a unique identifier designated as a DUNS replacement, in each application or plan it submits to CCC.

(c) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the TASC program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive TASC funding.

§ 1487.6 Application review and formation of agreements.

(a) *General.* Proposals received in accordance with the announcement and

this part will undergo a multi-phase review by CCC to determine eligibility for the program, the qualifications, quality, and appropriateness of proposed projects, and the reasonableness of proposed project budgets.

(b) *Evaluation criteria.* CCC will review all proposals for eligibility and completeness. CCC will evaluate and score each proposal against the factors described in the NOFO. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal, and submit the proposals and funding recommendations to appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating the merits of a proposal. Demonstration of substantial U.S. industry participation in or financial or other support of a proposal will be a positive factor in the consideration of proposals. All reviewers will be required to sign a conflict of interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(c) *Approval decision.* CCC will approve those applications that it determines best satisfy the criteria and factors specified in the announcement and this part. All decisions regarding the disposition of an application are final.

§ 1487.7 Applicant notification.

(a) CCC will notify each applicant in writing of the final decision on its application. CCC will send an agreement and an approval letter to each approved applicant. An applicant that accepts the terms and conditions contained in the agreement and approval letter must so indicate by having the appropriate authorizing official sign the agreement and submit it to CCC. The applicant may not begin to implement approved activities until the applicant's authorizing official and CCC have signed the agreement. The applicant is authorized to begin implementation of the project as of the date specified in the approval letter, unless otherwise indicated.

(b) The approval letter and agreement will outline the activities and budgets that are approved and will specify the terms and conditions applicable to the project, including the levels of TASC funding and cost share requirements.

§ 1487.8 Reimbursements and advances.

(a) *Reimbursement procedures.* (1) Following the implementation of a project for which CCC has agreed to provide funding, a Participant may submit claims for reimbursement of eligible expenses incurred in implementing a TASC project, to the extent that CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by CCC before any reimbursable expenses associated with the change can be incurred. A Participant will be reimbursed after CCC reviews the claim and determines that it is complete.

(2) CCC will make all payments to the Participants in U.S. dollars. FAS will initiate payment within 30 days after receipt of the billing, unless the billing is improper.

(3) Participants will be authorized to submit requests for reimbursements or advances at least monthly when electronic fund transfers (EFTs) are not used, and as frequently as desired when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(4) Participants may submit claims for reimbursement of the expenses incurred in implementing TASC projects, to the extent CCC has agreed to pay for such costs, limited initially to 85 percent of the total amount specified in the agreement. The Participant may be reimbursed for the remaining 15 percent of the funds only after the final performance report containing the information required by the agreement is submitted to and approved by FAS.

(5) Final claims for reimbursement must be received no later than 90 calendar days after the completion date of the project or following the expiration or termination date of the agreement, whichever is sooner, and are subject to FAS approval of the Participant's final performance report. Participants are required to use a prescribed system to submit their claims. This system will

be clearly stated in the NOFO. Currently the CCC's internet-based UES system is being used to request reimbursement for eligible TASC program expenses.

(6) Participants shall maintain complete records of all program expenditures, identified by TASC agreement number, program year, country or region, activity number, and cost category. Such records shall be accompanied by documentation that supports the expenditure and shall be made available to CCC upon request. CCC may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(7) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the Participant shall repay CCC within 30 calendar days of such overpayment or disallowance the amount overpaid or disallowed either by submitting a check payable to CCC and referencing the applicable project, or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(8) The Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to the appropriate Attaché/Counselor and FAS Division Director.

(b) *Advances*—(1) *Policy*. In general, CCC operates the TASC program on a cost reimbursable basis.

(2) *Exception*. Upon request, CCC may make advance payments to a Participant against an approved project budget. Participants may request an advance of up to 85 percent of the funding approved in any given program year. Advances should be limited to the minimum amounts needed and requested as close as is administratively feasible to the actual time of disbursement by the Participant. Reimbursement claims will be used to offset advances. Participants shall deposit and maintain advances in insured, interest-bearing accounts, unless the exceptions in 2 CFR part 200 apply. Interest earned by the Participant on funds advanced by CCC is not program income. Up to $500 of interest earned per year may be retained by the Participant for administrative expenses. Any additional interest earned on Federal advance payments shall be remitted annually to the appropriate entity as required in 2 CFR part 200.

(3) *Refunds due CCC*. A Participant shall fully expend all advances on approved activities within 90 calendar days after the date of disbursement by CCC. By the end of 90 calendar days, the Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1487.9 Reporting.

(a) Participants are required to submit regular financial and performance reports in accordance with their agreement. Reporting requirements and formats for both annual financial and performance reports and final financial and performance reports will be specified in the agreement between CCC and the Participant.

(b)(1) In addition to the information required in 2 CFR 200.328(b)(2), a Participant's performance reports must include pertinent information regarding the Participant's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the Participant must provide an explanation in the report.

(2) A Participant must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the Participant's performance data to determine whether it is accurate and reliable. The Participant must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(c) All final performance reports will be made available to the public.

(d) If requested by FAS, a Participant must provide to FAS additional information or reports relating to the agreement.

(e) If a Participant requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and will make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

§ 1487.10 Notification of international travel.

The Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel by the Participant or its consultants or other participants. The timing of such notice should be far enough in advance to enable the Attaché/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel generally will result in disallowance of the expenses related to the travel, unless CCC determines it was impractical to provide such notification.

§ 1487.11 Evaluation.

Project evaluations may be carried out by CCC at its option with or without Participants. CCC may also seek outside expertise to conduct or participate in evaluations.

§ 1487.12 Compliance reviews and notices

(a) *Compliance review process.* (1) USDA staff may conduct compliance reviews of Participant's activities under the TASC program to ensure compliance with this part, applicable Federal laws and regulations, and the terms of the agreements and approval letters. Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews. Program funds spent inappropriately or on unapproved activities must be returned to CCC.

(2) Any project or activity funded under the program is subject to review or audit at any time during the course of implementation or after the completion of the project.

(3) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the Participant. The compliance report will detail any instances where it appears that the Participant is not complying with any of the terms or conditions of the agreement, approval letter, or the applicable laws and regulations. The report will also specify if it appears that CCC may be entitled to recover funds from the Participant and will explain the basis for any recovery of funds from the Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of the TASC program, CCC may require the Participant to contract for an independent audit.

(4) In addition, CCC may notify a Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The Participant shall, within 30 calendar days of the date of the notice, repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a Participant notifies CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to the provisions of this part, the amount owed to CCC by the Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(5) The fact that a compliance review has been conducted by USDA staff does not signify that a Participant is in full compliance with its agreement, approval letter, and/or applicable laws and regulations.

(b) *Participant response to compliance report.* (1) A Participant shall, within 60 calendar days of the date of the issuance of a compliance report, submit a written response to CCC. The response may include additional documentation for consideration or a request for reconsideration of any finding along with supporting justification. If the Participant does not wish to contest the compliance report, the response shall include any money owed to CCC, which may be returned by submitting a check payable to CCC or by offsetting a reimbursement claim. The Participant shall make any payments in U.S. dollars, unless otherwise approved in advance by CCC. CCC, at its discretion, may extend the period for response.

(2) After reviewing the response, CCC shall determine whether the Participant owes any funds to CCC and will inform the Participant in writing of the basis for the determination. CCC may initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to the debt settlement policies and procedures in 7 CFR part 1403.

(c) *Participant appeals of CCC determinations.* (1) Within 30 calendar days of the date of the issuance of a determination, the Participant may appeal the determination by making a request in writing that includes the basis for such reconsideration. The Participant may also request a hearing.

(2) If the Participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, CCC may, at its discretion, have a transcript prepared at CCC's expense.

(3) CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1487.13 Records retention.

All records related to the project, including records pertaining to subawards, shall be made available upon request to authorized officials of the U.S. Government.

§ 1487.14 Program income.

Program income means gross income earned by the Participant that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Any such income generated from an activity, the expenditures for which have been wholly or partially reimbursed with TASC funds, shall be used by the Participant in furtherance of its approved activities in the program period during which the TASC funds are available for obligation by the Participant, or must be returned to CCC. The use of such income shall be governed by this part. Reasonable activity fees or registration fees, if identified as such in a project budget, may be charged for projects approved for program funding. The intent to charge a fee must be part of the original proposal, along with an explanation of how such fees are to be used. Any activity fees charged must be used to offset activity expenses or returned to CCC. Such fees may not be used as profit or counted as cost share.

§ 1487.15 Subrecipients.

(a) A Participant may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive CCC-provided funds, program income, or other resources from the Participant for this purpose. The Participant must enter in to a written subaward with the subrecipient and comply with the applicable provisions of 2 CFR 200.331 and/or the Federal Acquisition Regulation (FAR), if applicable. If required by the agreement, the Participant must provide a copy of such subaward to FAS, in the manner set forth in the agreement, prior to the transfer of CCC-provided funds or program income to the subrecipient.

(b) A Participant must include the following requirements in a subaward:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400

and/or the FAR, if applicable. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient must pay to the Participant the value of CCC-provided funds, interest, or program income that are not used in accordance with the subaward, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(3) In accordance with 2 CFR 200.501(h), subawards must include a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include preaward audits, monitoring during the agreement, and post-award audits.

(c) A Participant must monitor the actions of a subrecipient as necessary to ensure that CCC-provided funds and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subaward and that performance indicator targets are achieved for both activities and results under the agreement.

(d) Participants have full and sole responsibility for the legal sufficiency of all subawards they may enter into with one or more subrecipients in order to carry out an approved project and shall assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on subawards entered into by the Participant. Neither CCC nor any other agency of the United States Government nor any official or employee of CCC, FAS, USDA, or the United States Government has any obligation or responsibility with respect to Participant subawards with third parties.

(e) Participants are responsible for ensuring to the greatest extent possible that the terms, conditions, and costs of subawards constitute the most economical and effective use of project funds.

(f) All fees for professional and technical services paid to subrecipients in any part with project funds must be covered by written subawards.

(g) A Participant shall:

(1) Ensure that all expenditures for goods and services in excess of $25 reimbursed by CCC are documented by a purchase order or invoice;

(2) Ensure that no employee, officer, board member, agent, or the employee's, officer's, board member's, or agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, participates in the review, selection, award or administration of a subaward in which such entities or their affiliates have a financial or other interest;

(3) Conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned shall be excluded from competition for such procurement;

(4) Conduct all awarding of grants and agreements in an openly competitive manner, except under the following conditions:

(i) Non-monetary awards of property or services;

(ii) Awards of less than $75,000;

(iii) Awards to fund continuing work already started under a previous award;

(iv) Awards that cannot be delayed due to an emergency or a substantial danger to health or safety;

(v) Awards when it is impracticable to secure competition; or

(vi) Awards to fund unique and innovative unsolicited applications;

(5) Base each solicitation for professional or technical services on a clear and accurate description of and requirements related to the services to be procured;

(6) Perform and document some form of fee, price, or cost analysis, such as a

comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered fees or prices for procurements in excess of the simplified acquisition threshold defined at 2 CFR 200.88; and

(7) Document the decision-making process.

§ 1487.16 Suspension and termination of agreements.

(a) An agreement or subaward may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied; or

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable.

(b) If an agreement is terminated, the Participant:

(1) Is responsible for using or returning any CCC-provided funds, interest, or program income that have not been disbursed, as agreed to by FAS; and

(2) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1487.17 Audit requirements.

(a) Subpart F of 2 CFR part 200 applies to all Participants and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a Participant or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subaward, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the Participant or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the Participant or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subaward when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the Participant or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a Participant or subrecipient that is a for-profit entity or a subrecipient that is a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any Participants or subrecipients, including for-profit entities and foreign organizations. Participants and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1487.18 Disclosure of program information.

(a) Documents submitted to CCC by Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and 7 CFR part 1, subpart A, including, specifically, 7 CFR 1.11.

(b) Any research conducted by a Participant pursuant to an agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1487.19 Ethical conduct.

(a) The Participant shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

(b) A Participant shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out and in accordance with applicable U.S. Federal, state, and local laws and regulations. A Participant shall conduct its business in the United States in accordance with applicable Federal, state, and local laws and regulations.

(c) Neither a Participant nor its affiliates shall make export sales of U.S. agricultural commodities covered under the terms of an agreement. Neither a Participant nor its affiliates shall charge a fee for facilitating an export sale. A Participant may collect check-off funds and membership fees that are required for membership in the Participant's organization.

(d) The Participant shall not use program activities or project funds to promote private self-interests or conduct private business.

(e) A Participant shall not limit participation in its TASC activities to members of its organization. Participants shall ensure that their TASC-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors.

(f) A Participant shall select U.S. agricultural industry representatives to participate in activities based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a Participant shall submit such selection criteria to CCC for approval.

(g) The Participant must report any actions or circumstances that may have a bearing on the propriety of program activities to the appropriate Attaché/Counselor, and the Participant's U.S. office shall report such actions or circumstances in writing to CCC.

(h) The officers, employees, board members, and agents of the Participant shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, sub-contractors, or parties to sub-agreements. However, Participants may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members, or agents of the Participant.

§ 1487.20 Amendments.

(a) Participants may request to modify approved projects if circumstances change in such a way that they would likely affect the progress and ultimate success of a project. Such modification must be made through a written amendment to the agreement. All requests for project modifications must be made in writing to CCC and must include:

(1) A justification as to why changes to the project as originally designed are needed;

(2) An explanation of the necessary adjustments in approach or strategy; and

(3) A description of necessary changes in the project's time line(s) and/or budget (*e.g.*, shifting of budgetary resources from one-line item to another in order to accommodate the changes).

(b) All requests for project modifications must be reviewed and approved by CCC. Upon approval, CCC will issue an amendment to the agreement, which must be signed by CCC and the Participant.

§ 1487.21 Noncompliance with an agreement.

(a) If a Participant fails to comply with any term in its project agreement, approval letter, or this part, CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the Participant, following the procedures set forth in this part. CCC may

also initiate a claim against a Participant if program income or CCC-provided funds are lost due to an action or omission of the Participant. If any Participant has engaged in fraud with respect to the TASC program, or has otherwise violated program requirements under this part, CCC may:

(1) Hold such Participant liable for any and all losses to CCC resulting from such fraud or violation;

(2) Require a refund of any assistance provided to such Participant plus interest as determined by FAS; and

(3) Collect liquidated damages from such Participant in an amount determined appropriate by FAS.

(b) The provisions of this section shall be without prejudice to any other remedy that is available under any other provision of law.

§ 1487.22 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this part have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0038 for this information collection.

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM–5)

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1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM–5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Pub. L. 83–664 are not applicable to shipments under this program.

(d) The regulations contained in this subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) *Account receivable* means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with §1488.14, and (3) acceleration of payment thereunder in accordance with these regulations.

(b) *Agency or branch bank* means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) *Assistant Sales Manager* means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager.

(d) *Bank obligation* means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with §1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or any agency or branch bank in accordance with §1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever occurs first, if payment is not received from other sources.

(e) *CCC* means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) *Carrying charges* means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidental costs as may be approved by the Assistant Sales Manager.

(g) *Commercial risk* means risk of loss due to any cause other than specified as noncommercial risk in paragraph (u) of this section.

(h) *Date of delivery* means the onboard date of the ocean bill of lading, or the date of an airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the onboard carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) *Date of sale* means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) *Delivery* means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export

under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) *Eligible commodities* means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with §1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) *Eligible cotton* means Upland and Extra Long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) *Eligible destination* means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) *Eligible exporter* or *exporter* means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) *OGSM* means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) *Financing agreement* means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) *Financing period* means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) *Foreign bank* means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) *Foreign importer* or *importer* means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) *GSM–5* means the regulations contained in this subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) *Noncommercial risk* means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or

confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) *Port value* means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) *Sale* means a contract to sell on credit U.S. agricultural commodities to be financed under GSM–5.

(x) *United States* means the 50 States, the District of Columbia, and Puerto Rico.

(y) *U.S. bank* means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) *USDA announcement* means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM–5.

(aa) *Vice President, CCC* means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 30833, June 17, 1977; Amdt. 5, 43 FR 25992, June 16, 1978; 86 FR, Dec. 6, 2021]

FINANCING EXPORT SALES

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(a) Permit U.S. exporters to meet competition from other countries.

(b) Prevent a decline in U.S. commercial export sales.

(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(d) Result in a new use of the agricultural commodity in the importing country.

(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM–5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM–5 financing agreement.

(11) Any additional information as determined by CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM–5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM–5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and

the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with §1488.11.

DOCUMENTS REQUIRED FOR FINANCING

§1488.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a ''Combined Application for Disbursement, Assignment of Account Receivable and Certification'' which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) A copy of the document evidencing export provided for in §1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with §1488.7(c), §1488.10, §1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with §1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of

sales registered in accordance with §1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with §1488.12.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

§1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

§1488.9a Evidence of export for commodities delivered before export.

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

DOCUMENTS REQUIRED AFTER FINANCING

§1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess

of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in §1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must:

(1) Identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement,

(2) State the quantity and date of entry of the commodity into the destination country, and

(3) Be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which:

(1) Identifies the commodity as that exported under the financing agreement,

(2) States the quantity of the commodity entered under bond and date of entry into the destination country, and

(3) Certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with §1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however,* That the aggregate of all amounts assessed under this §1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to

such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM–5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank

shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in §1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to §1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under §1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with §1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual

obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by §1488.15 and §1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in §1488.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§1488.19 [Reserved]

§1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) [Reserved]

§1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

PART 1489—REGIONAL AGRICULTURAL PROMOTION PROGRAM

Sec.

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AUTHORITY: 15 U.S.C. 714c(f).

SOURCE: 88 FR 80094, Nov. 17, 2023, unless otherwise noted.

§ 1489.10 General purpose and scope.

(a) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Regional Agricultural Promotion Program (RAPP), which subsumes the former Agricultural Trade Promotion Program (ATP). This program will provide assistance to eligible organizations that conduct market promotion activities, including activities to address existing or potential non-tariff barriers to trade, to promote U.S. agricultural commodities in certain foreign markets. Specific program requirements will be set forth in Notices of Funding Opportunity (NOFO) announced through the *Grants.gov* website.

(b)(1) In addition to the provisions of this part, other regulations of general applicability issued by the U.S. Department of Agriculture (USDA), including the regulations set forth in chapter XXX of this title, may apply to the RAPP and RAPP Participants, to the extent that the regulations of general applicability in this paragraph (b)(1) do not directly conflict with the provisions of this part. The regulations include, but are not limited to:

(i) 7 CFR part 1, subpart A.

(ii) 7 CFR part 3.

(iii) 7 CFR part 15, subpart A.

(iv) 2 CFR part 417.

(v) 2 CFR part 418.

(vi) 2 CFR part 421.

(vii) 48 CFR part 31.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to the CCC are also applicable to the RAPP and the regulations set forth in this part.

(3) RAPP Participants must also comply with Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

(4) Other laws and regulations that apply to the RAPP and RAPP Participants include, but are not limited to:

(i) 2 CFR part 25.

(ii) 2 CFR part 170.

(iii) 2 CFR part 175.

(iv) 2 CFR part 180.

(v) 2 CFR part 200.

(vi) 2 CFR part 400.

(vii) 37 CFR 401.1.

(viii) Executive Order 13224, as amended, ''Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.''

(c) Under the RAPP, the CCC may provide multi-year grant assistance to eligible U.S. entities to conduct certain marketing and promotion activities, including activities to address existing or potential non-tariff trade barriers, aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities. RAPP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. The CCC expects that all activities that occur in the United States for which RAPP reimbursement is sought will develop, maintain, or expand the commercial export market for the relevant eligible commodity in accordance with the RAPP Participant's approved RAPP program.

(d) The RAPP generally operates on a reimbursement basis.

(e) The CCC's policy is to ensure that benefits generated by RAPP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. The CCC also endeavors to enter into RAPP agreements covering a broad array of agricultural commodity sectors. The RAPP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of the CCC.

§ 1489.11 Definitions.

For purposes of this part the following definitions apply:

Activity means a specific foreign market development effort undertaken by a RAPP Participant.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a RAPP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: rent, office equipment, office supplies, computer hardware and software, office maintenance);

(2) Personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training);

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, mobile phone service postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy, Wi-Fi); and

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

Approval letter means a document by which the CCC informs an applicant that its RAPP application has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the RAPP Participant before it becomes effective.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand participant means a U.S. for-profit entity that owns the brand(s) of the eligible commodity to be promoted (or has the exclusive rights to use such brand(s)) and that is participating in the RAPP brand promotion program of another RAPP Participant. This definition does not include any U.S. agricultural cooperatives.

Brand promotion means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a brand participant in a brand program.

Budget period means the period during which a RAPP Participant can undertake activities consistent with this part and its program agreement and approval letter with CCC. Budget periods will be specified in a RAPP Participant's approval letter.

CCC means the Commodity Credit Corporation, including any agency or official of the United States delegated the responsibility to act on behalf of the CCC.

Constraint means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Contribution means an expenditure made by a RAPP Participant, the U.S. industry, or a State agency in support of an approved activity. This includes expenditures to be made by entities in the RAPP Participant's industry in support of the entities' related promotion activities in the markets covered by the RAPP Participant's agreement.

Credit memo means a commercial document, also known as a credit memorandum, issued by the RAPP Participant to a commercial entity that owes the RAPP Participant a certain sum. A credit memo is used when the RAPP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the RAPP Participant owes the entity against the amount the entity owes to the RAPP Participant.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any U.S. agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment made by a RAPP participant via the transfer of funds or an offset reflected in a credit memo in lieu of a transfer of funds.

FAS means Foreign Agricultural Service, USDA.

FAS website means a website maintained by FAS providing information on RAPP. It is currently accessible at *https://fas.usda.gov/programs/regional-agricultural-promotion-program*.

Foreign third party means a foreign entity that a RAPP Participant works with to promote the export of an eligible commodity under the RAPP program.

Generic promotion means an activity that is not a brand promotion but, rather, promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (*i.e.*, a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted eligible commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the RAPP Participant must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (*i.e.*, a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

Market means the country or countries targeted by an activity.

Notification means a document from the RAPP Participant by which the RAPP Participant proposes to CCC changes to the activities and/or funding levels in an approved RAPP program agreement and/or approval letter.

Period of performance means the total time interval between the start of a RAPP award and the planned end date, which may include one or more funded portions, or budget periods. A RAPP award's period of performance will be defined by the dates contained in the program agreement.

Product samples means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (*e.g.*, fresh or processed), independent of the ultimate utilization of the sample. Product samples must be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.

Program agreement means a document entered into between CCC and a RAPP Participant setting forth the terms and conditions of approved activities under RAPP, including any subsequent amendments to such agreement.

Promoted commodity means an eligible commodity the sale of which is the intended result of a promotional activity.

RAPP means the Regional Agricultural Promotion Program.

RAPP notice means Regional Agricultural Promotion Program notices, which are documents that CCC issues for informational purposes. These RAPP notices are made available electronically on the FAS website. These notices have no legal effect. They are intended to alert RAPP Participants to various aspects of CCC's current administration of the RAPP program.

RAPP Participant or *Participant* means an entity that has entered into a RAPP program agreement with the CCC.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Sales team means a group of individuals engaged in an approved activity intended to result in specific sales.

SRTG means State Regional Trade Group. An SRTG is a nonprofit association of State-funded agricultural promotion agencies.

Temporary contractor means a contractor, typically a consultant or other highly paid professional, that is hired on a short-term basis to assist in the performance of an activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

UES website means a website maintained by FAS through which applicants may apply and are reimbursed for RAPP and other USDA market development programs. The website is currently accessible to persons with e-authentication certification at *https://apps.fas.usda.gov/ues/webapp/*. FAS may prescribe a different system through which applicants may apply to the RAPP and will announce such system in the applicable NOFO.

Unified Export Strategy (UES) means a standardized online internet application developed by USDA and available for use by entities to apply to USDA market development programs, including the RAPP.

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

USDA means the United States Department of Agriculture.

U.S. for-profit entity means a firm, association, or other entity organized or incorporated, located, and doing business for profit in the United States, and engaged in the export or sale of an eligible commodity.

§ 1489.12 Participation eligibility.

(a) To participate in the RAPP as a RAPP Participant, an entity must be:

(1) A nonprofit U.S agricultural trade organization;

(2) A nonprofit SRTG;

(3) A U.S. agricultural cooperative; or

(4) A State agency.

(b) CCC will enter into an agreement only for the promotion of an eligible commodity.

(c) FAS may set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable NOFO posted on the U.S. Government website for grant opportunities.

§ 1489.13 Application process.

(a) *General application requirements.* CCC will periodically issue a NOFO through the *Grants.gov* website announcing that it is accepting applications for participation in the RAPP. Applications shall be submitted in accordance with the terms and requirements specified in the NOFO and in this part. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides RAPP funds to brand participants for brand promotion, as well as to conduct other market promotion activities, including activities to address existing or potential non-tariff trade barriers. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(b) *Requests for evaluation information.* CCC may request any information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information. Applicants shall provide any requested information in the manner and according to the timeframe specified by CCC.

(c) *Special rules governing demonstration projects funded with CCC resources.* CCC will consider proposals for demonstration projects, provided:

(1) No more than one such demonstration project per constraint is undertaken within a market;

(2) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(3) The demonstration project is a practical and cost-effective method of overcoming the constraint; and

(4) A third party must participate in such project through a written agreement with the RAPP Participant.

(d) *Universal identifier and System for Award Management (SAM).* In accordance with 2 CFR part 25, each entity that applies to the RAPP program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its unique identifier in each application or plan it submits to CCC.

(e) *Reporting subaward and executive compensation information.* In accordance with 2 CFR part 170, each entity that applies to the RAPP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive RAPP funding.

§ 1489.14 Application review and formation of agreements.

(a) *General.* (1) CCC will review all proposals for eligibility and completeness. CCC will evaluate each eligible proposal against the factors described in the appropriate NOFO to identify those applications that it considers to best meet the criteria and objectives outlined in the NOFO. Based on its review and evaluation, CCC will, subject to the availability of funds, recommend an appropriate funding level for each proposal and submit the proposals and funding recommendations to the appropriate officials for decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating a proposal. All reviewers will be required to sign a conflict-of-interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(2) When considering applicant organizations, CCC may give priority to those organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted, as determined by CCC. CCC may require that an applicant participate in the RAPP through another RAPP Participant or applicant.

(3) CCC will approve those applications that it determines best satisfy the criteria and factors specified in the NOFO.

(4) CCC will notify each applicant in writing of the final disposition of its application.

(b) *Formation of agreements.* CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a RAPP Participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having the appropriate personnel sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(c) *Signature cards.* The RAPP Participant is encouraged to designate at least two individuals in its organization to sign program agreements and amendments, approval letters, reimbursement claims, and advance requests. The RAPP Participant shall submit the signature card signed by those designated individuals and by the RAPP Participant's Chief Executive Officer (or designee) to CCC. The Participant shall immediately notify CCC in writing of any changes in signatories and shall submit a revised signature card accordingly.

(d) *UES ID and passwords.* CCC will provide each RAPP Participant with IDs and passwords for the UES website, as necessary. RAPP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information, or when a person who is not authorized gains such information.

(e) *Annual certifications.* A RAPP Participant through which U.S. for-profit entities are participating in the RAPP program shall obtain annual certifications from all such entities that certify their size, as defined in this part. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this part.

(f) *Changes to activities and funding*—(1) *Adding a new activity.* (i) A RAPP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the RAPP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description and the proposed budget.

(iii) After receipt of the notification, CCC will inform the RAPP Participant via the UES website whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) A RAPP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) A RAPP Participant may make significant adjustments below $25,000 or 25 percent of the approved funding level, whichever is greater, to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

§ 1489.15 Operational procedures for brand promotion programs.

(a) Where CCC approves an application by a RAPP Participant to run a brand promotion program that will include brand participants, the RAPP Participant shall establish brand program operational procedures. The RAPP Participant shall submit to CCC for approval its proposed brand program operational procedures. CCC will notify all RAPP Participants in writing in each Participant's approval letter as to applicable submission dates for and dates for approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements. The RAPP Participant must submit to CCC for approval any proposed changes to already approved brand program operational procedures before implementing such proposed changes.

(b) The RAPP Participant shall not enter into any participation agreements with brand participants, nor shall it implement any RAPP brand activities, unless and until CCC has communicated in writing its approval of the proposed operational procedures to the RAPP Participant.

(c) Where CCC approves a RAPP Participant's application to run a brand promotion program that will include brand participants, the RAPP Participant shall enter into participation agreements with brand participants. Brand participants' size may not exceed 300 percent of the applicable small business size standard as found in 13 CFR part 121. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the RAPP Participant's approved budget period;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the eligible commodity as ''American'', ''Product of the United States of America'', ''Product of the U.S.'', ''Product of the U.S.A.'', ''Product of America'', ''Grown in the United States of America'', ''Grown in the U.S.'', ''Grown in the U.S.A.'', ''Grown in America'', ''Made in the United States of America,'' ''Made in the U.S.'', ''Made in the U.S.A.'', ''Made in America'', or product of, grown in or made in any state or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by the CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of ⅛ inch (.42 centimeters) in height based on the lower case letter ''o''. The use of the above terms as a descriptor or in the name of the product (*e.g.,* Cincinnati style chili, Gina's American Pizza) does not satisfy the product origin requirement. Phrases ''product of'', ''grown in'' or ''made in'' are encouraged, but not required. A RAPP Participant that wishes to use an origin statement that varies from those set out in this subsection must submit the proposed statement to CCC for review and must receive approval to use the statement before its use in an activity. A RAPP Participant may request an exemption from this requirement on a case-by-case basis. All such requests shall be in writing and include justification satisfactory to the CCC that the labeling requirement in this paragraph (c)(6) would hinder a RAPP Participant's promotional efforts. CCC will determine, on a case-by-case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, the CCC may temporarily waive this requirement where the CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to RAPP Participants via a RAPP notice issued on the FAS website;

(7) Include a written certification by the brand participant that identifies its size on the date of its application for branded program funding, or that it is a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the RAPP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for three calendar years following the end of the applicable budget period and make such records and documents available upon request to authorized officials of the U.S. Government.

§ 1489.16 Contribution rules.

(a) In RAPP generic promotion programs, a RAPP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources provided by the CCC for all generic promotion activities undertaken by the RAPP Participant.

(b) In RAPP brand promotion programs, a RAPP Participant conducting its own brand promotion or a brand participant that is participating in the RAPP brand promotion program of another RAPP Participant shall contribute at least 50 percent of the total eligible expenditures submitted in accordance with § 1489.17 made on each approved brand promotion.

(c) A RAPP Participant must use its own funds and may not use RAPP program funds to pay any administrative costs of the RAPP Participant's U.S. office(s), including legal fees, except as

set forth in this part. Where the RAPP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contributions the RAPP Participant contributes to RAPP generic or brand promotion programs.

(d) Regarding eligible contributions:

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant's industry or agricultural sector in support of the entities' related promotion activities in the markets covered by the applicant's application) or State agency will make, the RAPP applicant may include the costs listed under paragraph (d)(2) of this section if such expenditures:

(i) Are necessary and reasonable for accomplishment of an approved activity;

(ii) Are not included as contributions for any other Federal award; and

(iii) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to the matching or cost sharing requirements of other Federal programs.

(2) Subject to paragraph (d)(1) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the RAPP Participant;

(ix) The cost of activities conducted overseas;

(x) Credit card fees;

(xi) The cost of any independent evaluation or audit that is not required by the CCC to ensure compliance with program agreement or regulatory requirements;

(xii) The cost of giveaways, awards, prizes and gifts;

(xiii) The cost of product samples;

(xiv) Fees for participating in U.S. Government-sponsored or endorsed export promotion activities;

(xv) The cost of air and local travel in the United States;

(xvi) STRE and the costs associated with trade shows, seminars, and entertainment conducted in the United States where the STRE and costs associated with trade shows, seminars, and entertainment have a programmatic purpose and are authorized in the program agreement and/or the approval letter or authorized by prior written approval of the CCC;

(xvii) Other administrative expenses (*e.g.*, supervisory travel from the U.S. to an overseas office); and

(xviii) The cost of any activity expressly listed as reimbursable in this part.

(3) The following are not eligible contributions:

(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as ''backsell'');

(iii) Any land costs other than allowable costs for office space;

(iv) The cost of refreshments and related equipment provided to office staff;

(v) The cost of insuring articles owned by private individuals;

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research, except as described in § 1489.17(c)(22);

(viii) Slotting fees or similar sales expenditures;

(ix) Membership fees in clubs and social organizations; and

(x) Any expenditure for an activity prior to the CCC's approval of that activity.

(4) The CCC shall determine, at the CCC's discretion, whether any cost not expressly listed in this section may be included by the RAPP Participant as an eligible contribution.

§ 1489.17 Reimbursement rules.

(a) A RAPP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the accomplishment of an approved RAPP activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, for either brand or generic promotion activities, the CCC will reimburse, in whole or in part, the costs of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the RAPP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the RAPP Participant's promoted products as well as for RAPP-promoted products, then expenditures for such advertising will not be reimbursed in whole or in part (*e.g.,* expenditures may not be prorated and submitted for reimbursement). Electronic media include, but are not limited to, radio, television, electronic mail, internet, telephone, text messaging, social media, and podcasting.

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials.

(3) Direct mail advertising.

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples, except as authorized in paragraph (c)(9) of this section).

(5) Temporary displays and rental of space for temporary displays.

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States.

(7) Subject to paragraph (b)(18) of this section, expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States, such expenditures are reimbursable only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and, an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from outside the U.S. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available, and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(8) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for no more than two representatives of a single brand participant (or RAPP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members

of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions. All travel should follow a direct or usually traveled route.

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the RAPP Participant.

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars.

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to RAPP Participants via a RAPP notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item.

(12) The design and production of packaging, labeling or origin identification, to be used during the budget period in which the expenditure is made, if such packaging, labeling or origin identification is necessary to meet the importing requirements of a foreign country.

(13) The design, production, and distribution of coupons for products other than the RAPP Participant's promoted products. If such activities include both coupons or price discounts for products other than the RAPP Participant's promoted products as well as for RAPP-promoted products, then expenditures for such activities will not be reimbursed in whole or in part (*e.g.*, expenditures may not be prorated and submitted for reimbursement).

(14) An audit of a RAPP Participant as required by 2 CFR part 200, subpart F, if the RAPP is the RAPP Participant's largest source of Federal funding.

(15) The translation of written materials as necessary to carry out approved activities.

(16) Expenditures associated with developing, updating, and servicing websites on the internet that clearly target a foreign audience.

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the RAPP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv) The RAPP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(A) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(B) Pre-arranged one-on-one business meetings; and

(C) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(v) Reimbursement is conditional on the RAPP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel to that country or region. All

travel should follow a direct or usually traveled route.

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, RAPP funds may be used to reimburse the travel and/or non-travel expenditures of only those RAPP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. All travel should follow a direct or usually traveled route. Upon written request, the CCC may temporarily waive this subsection, on a case-by-case basis, where:

(i) The trade show is segregated into product pavilions; or

(ii) A company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the RAPP Participant in writing.

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to a RAPP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (*e.g.*, a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the RAPP Participant's domestic home office during a budget period, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same budget period are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, but for generic promotion activities only, the CCC will also reimburse, in whole or in part, the cost of:

(1) Temporary contractor fees for contractors stationed overseas, except the CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS–15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate.

(2) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas, and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, then international travel expenditures are covered only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and, an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the United States. The CCC will compile a list of approved retail, trade, and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available, and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(i) The CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate or when the RAPP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel to that country or region, unless the CCC determines it was impractical to provide such notice. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the RAPP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for

flights offered by three different airlines between the same points on the same date, and the RAPP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(ii) In limited circumstances, the RAPP Participant may be reimbursed for air travel up to the business class rate (*i.e.,* a premium class rate other than the first class rate) upon prior written approval by the CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare, and the RAPP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(C) If an eligible traveler is an employee, contractor, or member of a RAPP participant organization, and the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.,* weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(D) If an eligible traveler is the target of a market development activity (*e.g.,* a foreign buyer, foreign importer, member of the foreign media), then the RAPP Participant may be reimbursed for air travel up to the business class rate when the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds five hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (*e.g.,* weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances noted in paragraphs (c)(2)(ii)(C) and (D) of this section, the CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either *en route* or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses.

(iv) A stopover for purposes of this paragraph (c)(2) is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another.

(v) All travel under this paragraph (c)(2) should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel. An eligible traveler that is the target of a market development activity is only eligible for a rest period when that traveler flies in economy class and meets the 14-hour test.

(3) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status.

(4) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200.

(5) Accident liability insurance premiums for facilities used jointly with third-party participants for RAPP activities or for RAPP-funded travel of third-party participants, provided the types and extent and cost of coverage

are in accordance with the RAPP Participant's policy and sound business practice.

(6) Market research, including research to determine the types of products that are desired in a market.

(7) Legal fees incurred in resolving trade issues with foreign countries.

(8) The sample purchase price, and the cost of transporting samples domestically in the United States to the port of export and then to the first foreign port or first point of entry, for samples of eligible commodities used to provide on-site technical assistance to the trade necessary to facilitate successful use of the relevant eligible commodity by importers. The target of such activity must be the trade, and not consumers, but any product resulting from the technical training can be used to determine consumer preferences.

(9) STRE incurred outside of the United States and STRE incurred within the United States in conjunction with an approved activity where the STRE has a programmatic purpose and are authorized with prior written approval from the CCC. RAPP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions incurred outside of the United States as the basis for their calculating eligible expenses. RAPP Participants may exceed Embassy guidelines by up to 25 percent without prior approval. RAPP Participants may only exceed 125 percent of Embassy guidelines when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed 125 percent of the guidelines will not be reimbursed. RAPP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines and this part. For STRE incurred in the United States, the RAPP Participant should provide, in its request for approval, the basis for determining its proposed expenses.

(10) U.S. office(s) administrative support expenses, incurred specifically to administer the RAPP, for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council. The level of such funding will be established in the approval letter.

(11) U.S. office(s) administrative support expenses, incurred specifically to administer the RAPP, for any RAPP Participants not identified in paragraph (c)(10) of this section, will be considered, except for agricultural cooperatives. Reimbursement for such expenses shall not exceed eight percent of the RAPP Participant's total RAPP budget. The level of such funding will be established by CCC in the approval letter.

(12) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States.

(13) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for international retail, trade, and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade, and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(14) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for seminars and educational training conducted in the United States.

(15) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for up to two individuals, whether home office RAPP

Participant employees, RAPP Participant board members, or State department of agriculture employees paid by the RAPP Participant, or a combination thereof, when such individuals accompany foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the RAPP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The RAPP-sponsored travelers submit a follow-up trip report to CCC that includes the following:

(A) Purpose for the individuals' participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(16) Approved demonstration projects.

(17) Expenditures related to copyright, trademark, or patent registration, including attorney fees.

(18) Rental or lease expenditures for storage space for program-related materials.

(19) Business cards that target a foreign audience.

(20)(i) Expenditures associated with developing, updating, and servicing websites on the internet that:

(A) Contain a message related to exporting or international trade;

(B) Include a discernible ''link'' to the FAS website or an FAS overseas office website; and

(C) Have been specifically approved by the appropriate FAS division. Expenditures related to websites or portions of websites that are accessible only to an organization's members are not reimbursable.

(ii) Reimbursement claims for websites that include ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access.

(21) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending non-tariff barriers to trade that prohibit or threaten U.S. exports of agricultural commodities. Examples of such expenditures include, but are not limited to: initial pre-clearance programs, educational training, policy advocacy, public relations efforts, foreign country audits of U.S. facilities, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, and reasonable logistical and administrative support.

(22) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, and fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the RAPP Participant's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office.

(23) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year, such as equipment, machinery, removable fixtures, computer hardware and software, and portable electronic communications devices (including mobile phones and wireless devices).

(24) Compensation and allowances for housing and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, provided such benefits are granted under established written policies, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15 Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel.

(25) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas, subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan; or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the RAPP Participant shall document by a salary survey or other means.

(26) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change.

(27) Accrued annual leave as of the time employment is terminated or as of such time as required by local law.

(28) Overtime paid to clerical staff of approved RAPP-funded overseas offices.

(29) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies.

(30) Legal fees to obtain advice on the host country's labor laws.

(31) Employment agency fees.

(32) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months.

(33) Travel costs for dependents, as allowed in 2 CFR part 200 (*e.g.*, for travel of duration of six months or more with prior approval of CCC).

(34) That portion of the cost of wireless phone plans that is devoted to program activities and monthly service fees prorated at the proportion of program-related usage to total usage.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, or judgments relating to legal suits, challenges or disputes, except as otherwise allowed in 2 CFR part 200 and this part;

(3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this part;

(4) Product development, product modification or product research, except as specified in paragraph (c)(21) of this section;

(5) Product samples to be distributed to consumers;

(6) Slotting fees or similar sales expenditures;

(7) The purchase of, construction of, or lease of space for permanent, nonmobile displays, *i.e.*, displays that are constructed to remain permanently in the same location beyond one budget period. However, the CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from the CCC of such construction or purchase;

(8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the RAPP promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation that the CCC will determine. Such determination will be announced in writing via a RAPP notice issued on FAS' website;

(12) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if the CCC determines that such a review is needed in order to ensure future program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government-sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the RAPP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraphs (c)(10) and (11) of this section, and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved RAPP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the RAPP Participant to pay such employees' or contractors' share;

(29) Any expenditure made for an activity prior to the CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening;

(31) Expenditures associated with a RAPP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures;

(32) Entertainment (*e.g.*, amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events); and

(33) Refreshments, or related equipment, for office staff.

(e) For a brand promotion activity, the CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity by a brand participant.

(f) The CCC will reimburse for expenditures made after the conclusion of a RAPP Participant's period of performance, provided:

(1) The activity was completed prior to the expiration date shown in the RAPP Participant's program agreement; and

(2) All expenditures for the activity were made within 6 months following the expiration date shown in the RAPP Participant's program agreement.

(g) A RAPP Participant shall not use RAPP funds for any activity or any expenses incurred by the RAPP Participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by the CCC.

(h) Except as otherwise provided in this part, RAPP-funded travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, and RAPP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). For international travel, the RAPP Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(i) The CCC may determine, at the CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§ 1489.18 Reimbursement procedures.

(a) Participants are required to use the CCC's UES system to request reimbursement for eligible expenditures under RAPP.

(b) All claims for reimbursement shall be submitted by the RAPP Participant's U.S. office to the CCC through the UES system.

(c) [Reserved]

(d) The CCC will not reimburse claims submitted later than 6 months after the expiration date shown in the RAPP Participant's program agreement.

(e) If the CCC overpays a reimbursement claim, then the RAPP Participant shall repay the CCC the amount of the overpayment either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The Participant shall make such payment within 30 calendar days of the date that they discover, or are made aware, of any overpayment. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

(f) If a RAPP Participant receives a reimbursement or offsets an advanced payment that is later disallowed, the RAPP Participant shall repay the CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

(g) RAPP funds may be expended by RAPP Participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If a RAPP Participant discovers that RAPP funds have not been properly spent, it shall notify the CCC and shall within 30 calendar days of its discovery repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars.

(h) The RAPP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

§ 1489.19 Advances.

(a) *Policy*. In general, the CCC operates the RAPP on a reimbursable basis.

(b) *Exception*. A RAPP Participant may request an advance of RAPP funds from the CCC for generic promotion activities, provided the RAPP Participant meets the criteria for advance payments in 2 CFR part 200. The CCC will not approve any request for an advance submitted after the expiration date shown in the RAPP Participant's program agreement. At any given time, total payments advanced shall not exceed 40 percent of a RAPP Participant's approved generic activity budget for the budget period. The CCC will not advance funds to a RAPP Participant for brand promotion activities. When approving a request for an advance, the CCC may require the RAPP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered by the CCC to create an unacceptable risk to the interests of the RAPP. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in RAPP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) *Interest*. A RAPP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by the CCC. The account shall be interest-bearing unless the exceptions in 2 CFR part 200 apply. Interest earned by the RAPP Participant on funds advanced by the CCC is not program income. The RAPP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in 2 CFR part 200.

(d) *Refunds due the CCC*. A RAPP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date the advance was approved in the UES. By the end of the 90 calendar days, the RAPP Participant must submit reimbursement claims to offset the advance or submit a check made payable to CCC for any unexpended balance. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

§ 1489.20 Financial management.

(a) A RAPP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. A RAPP Participant's financial management system shall comply with the standards in 2 CFR part 200.

(b) A RAPP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with this part.

(c) A RAPP Participant shall retain all records concerning a RAPP program transaction for a period of three years after completion of the program transaction and permit the CCC to have full and complete access to such records during the transaction period and for such three-year period after completion of the program transaction. These records shall include all records pertaining to contractors.

(d) A RAPP Participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program-related expenditure in excess of a set amount that CCC will determine and announce in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The CCC may, from time to time, set a different minimum amount. In that case, the CCC will announce the new amount in writing to all RAPP Participants via a RAPP notice issued on the FAS website;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the RAPP Participant's CCC resources accounts;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7) Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contributions. RAPP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, a RAPP Participant shall provide to the CCC originals of documents supporting reimbursement claims.

§ 1489.21 Reports.

(a) *Contribution report.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the applicable U.S. industry, and the States during the Participant's RAPP period of performance. Foreign third-party contributions are not to be included in the contribution report.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), a RAPP Participant shall electronically submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(c) *Research reports.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report on any research conducted pursuant to the approved RAPP program.

(d) *Evaluation reports.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report on any evaluations conducted in accordance with the approved RAPP program, including the

outcome of action taken with RAPP funding and the increased market access or exports that can be directly attributed to the RAPP program.

(e) *Annual audits.* Where the CCC is designated the cognizant agency for audit, the CCC may require the RAPP Participant to submit to the CCC an annual audit in accordance with 2 CFR part 200. If the CCC requires an additional audit with respect to a particular agreement, then the RAPP Participant shall arrange for such audit and shall submit to the CCC, in the manner to be specified by the CCC, such audit of the agreement.

(f) *Additional reports.* The CCC may require the submission of additional reports.

(g) *Approval letters.* A RAPP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

(h) *Program reviews.* FAS, through its authorized representatives, may review project accomplishments, management control systems, and administration of funding provided through the program to ensure adherence to the requirements in this part. During such reviews, FAS will review recipients' files related to the grant-funded program, and technical assistance may be required.

§ 1489.22 Evaluation.

(a)(1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the RAPP. Evaluation of the RAPP's effectiveness will depend on a clear statement by Participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the RAPP and of individual Participants' programming is to increase sales that would not have occurred in the absence of RAPP funding. A RAPP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a RAPP Participant's program, contributing to program accountability and providing evidence of program effectiveness that directly ties program funds to increased sales.

(b) All RAPP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market during the latest budget period. This report shall be completed and submitted to the CCC no later than 6 months following the end of each Participant's budget period.

(c) When deemed appropriate or required by the CCC, a RAPP Participant shall complete a program evaluation. A program evaluation is a review of the RAPP Participant's entire program, or an appropriate portion of the program as agreed to by the RAPP Participant and CCC, to determine the effectiveness of the RAPP Participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the RAPP Participant and CCC and specified in the approval letter. A RAPP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations, as well as any proposed changes in program strategy or design as a result of the evaluation. A program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The scope of the evaluation;

(3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;

(4) A description of the evaluation methodology;

(5) A description of export sales achieved;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(d) When deemed appropriate or required by the CCC, RAPP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved RAPP program. Actual scope and timing of the brand promotion evaluation shall be determined by the RAPP Participant and CCC and specified in the approval letter.

(e) On an annual basis, or more often when appropriate or required by the CCC, a RAPP Participant shall complete and submit program success stories. The CCC will announce to all RAPP Participants in writing the detailed requirements for completing and submitting program success stories.

§ 1489.23 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of RAPP Participants' activities under the RAPP program. RAPP Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the RAPP Participant. The compliance report will specify whether USDA staff believe that CCC may be entitled to recover funds from the Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 60 calendar days of the date the compliance report cover letter is signed, the RAPP Participant shall repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC. If, however, a RAPP Participant notifies the CCC within 60 calendar days of the date the compliance report cover letter is signed that the Participant intends to file an appeal pursuant to paragraph (e) of this section, then the amount owed to the CCC by the RAPP Participant is not due until the appeal procedures are concluded and the CCC has made a final written determination as to the amount owed. If, as a result of a compliance review, the CCC determines that further review is needed in order to ensure compliance with the requirements of RAPP, then the CCC may require the Participant to contract for an independent audit.

(c) In addition, the CCC may notify a RAPP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. The CCC will explain the basis for any recovery of funds from the Participant in the written notice. The RAPP Participant shall, within 30 calendar days of the date of the notice, repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC. If, however, a RAPP Participant notifies the CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to paragraph (e) of this section, then the amount owed to the CCC by the RAPP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed.

(d) The fact that a compliance review has been conducted by USDA staff does not signify that a RAPP Participant is in compliance with its program agreement, approval letter, and/or applicable laws and regulations.

(e) For appeals:

(1) A RAPP Participant may, within 60 calendar days of the date of the compliance report or written notice from the CCC, submit a written response to the CCC appealing the report or notice.

CCC, at its discretion, may extend the period for response.

(2) After review of the Participant's response, the CCC shall determine whether the Participant owes any funds to the CCC and will inform the Participant in writing of the basis for the determination. The CCC will initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 3.

(3) Within 30 calendar days of the date of the determination, the Participant may request in writing that the CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The Participant may also request a hearing.

(4) If the Participant requests a hearing, the CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, the CCC may in its discretion have a transcript prepared at the CCC's expense.

(5) The CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the CCC.

§ 1489.24 Failure to make required contribution.

A RAPP Participant's required contribution will be specified in the approval letter. If the RAPP Participant's required contribution is specified as a dollar amount and the RAPP Participant does not contribute a total dollar amount sufficient to make the required contribution, then the RAPP Participant shall pay to the CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the RAPP Participant's required contribution is specified as a percentage of the total amount reimbursed by the CCC and the RAPP Participant does not provide a dollar amount of contributions sufficient to achieve the specified percentage, then the RAPP Participant may either return to the CCC the amount of funds reimbursed by the CCC to increase its actual contribution percentage to the required level or pay to the CCC in U.S. dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A RAPP Participant shall remit such payment within six months after the expiration date shown in the RAPP Participant's program agreement. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

§ 1489.25 Submissions.

For all permissible methods of delivery, submissions required by this part shall be deemed submitted as of the date received by the CCC.

§ 1489.26 Disclosure of program information.

(a) Documents submitted to CCC by RAPP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and 7 CFR part 1, subpart A, specifically §1.12.

(b) Any research conducted by a RAPP Participant pursuant to a RAPP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1489.27 Ethical conduct.

(a) A RAPP Participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, State, and local laws and regulations. A RAPP Participant shall conduct its business in the United States in accordance with applicable Federal, State, and local laws and regulations. All RAPP Participants must comply with the regulations in 2 CFR part 200 and this part.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a RAPP Participant nor its affiliates shall make export sales of eligible commodities covered under the terms of the applicable RAPP agreement. Nor shall such entities charge a

fee for facilitating an export sale. A RAPP Participant may, however, collect check-off funds and membership fees that are required for membership in the RAPP Participant. For the purposes of this paragraph (b), *affiliate* means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(c) A RAPP Participant shall not limit participation in its RAPP activities to members of its organization. Participants shall ensure that their RAPP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The RAPP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its RAPP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph (c) does not apply to any U.S. agricultural cooperative when implementing its own brand program.

(d) A RAPP Participant shall select U.S. agricultural industry representatives to participate in generic RAPP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by the CCC, a RAPP Participant shall submit such selection criteria to the CCC for approval.

(e) All RAPP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a Participant's RAPP agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The RAPP Participant must report any actions or circumstances that may have a bearing on the propriety of its RAPP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to the CCC.

§ 1489.28 Contracting procedures.

(a) Neither the CCC nor any other agency of the U.S. Government nor any official or employee of the CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to RAPP Participant contracts with third parties.

(b) A RAPP Participant shall comply with the procurement standards set forth in paragraphs (c) through (e) of this section when procuring goods and services and when engaging in construction to implement program agreements.

(c) Each RAPP Participant shall establish contracting procedures, for contracts that are funded, in whole or in part, with RAPP funds, that are open, fair, and competitive.

(d) Each RAPP Participant shall submit to the CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with RAPP funds. The CCC will notify all new and existing RAPP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. The CCC's approval of such contracting guidelines will remain in place until the CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by the CCC, these contracting guidelines shall govern all of a Participant's RAPP-funded contracting involving contracts with a minimum annual value that CCC will determine and announce in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The CCC may, from time to time, set a different minimum value. In that case, the CCC will announce the new amount in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method

for initiating corrective action for unsatisfactory performance under contracts. The RAPP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the RAPP Participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated in this paragraph (d)(1), has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. RAPP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every three years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the RAPP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the RAPP Participant.

(e) A RAPP Participant may undertake RAPP promotional activities directly or through a domestic or foreign third party. However, the RAPP Participant shall remain responsible and accountable to the CCC for all RAPP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to the CCC in relation to such third party's promotional activities and expenditures.

§ 1489.29 Property standards.

The RAPP Participant shall insure all RAPP-funded property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

§ 1489.30 Anti-fraud requirements.

(a) *All RAPP Participants.* (1) All RAPP Participants shall submit to the CCC for approval a detailed fraud prevention program. The CCC will notify all new and existing RAPP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. RAPP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The RAPP Participant shall not conduct or permit any RAPP promotion activities to occur unless and until the CCC has communicated in writing approval of the RAPP Participant's fraud prevention program.

(2) The RAPP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's RAPP program agreement and/or approval letter. The RAPP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by the CCC or USDA to the RAPP Participant for the prompt investigation of such allegation or occurrence.

(b) *RAPP Participants with brand programs.* (1) The RAPP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The RAPP Participant shall repay to the CCC funds paid to a brand participant through the RAPP Participant on claims that the RAPP Participant or the CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the RAPP Participant's determination or CCC's disallowance. The RAPP Participant shall repay CCC by submitting a check to CCC or by offsetting the RAPP Participant's next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A RAPP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for RAPP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless the CCC determines that the RAPP Participant was grossly negligent in the operation of the brand program regarding such claims. The CCC shall communicate any such determination to the RAPP Participant in writing.

§ 1489.31 Program income.

Any revenue or refunds generated from an activity, *e.g.*, participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with RAPP funds, shall be used by the RAPP Participant in furtherance of its approved RAPP activities in the budget period during which the RAPP funds are available for obligation by the RAPP Participant. The use of such revenue or refunds shall be governed by this part. Interest earned on funds advanced by the CCC is not program income.

§ 1489.32 Amendment.

A program agreement may be amended in writing with the written consent of the CCC and the RAPP Participant.

§ 1489.33 Noncompliance with an agreement or this part.

If a RAPP Participant fails to comply with any term in its program agreement or approval letter, or this part, the CCC may take one or more of

the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the RAPP Participant, following the procedures set forth in this part. The CCC may also initiate a claim against a RAPP Participant if program income or CCC-provided funds are lost due to an action or omission of the RAPP Participant.

§ 1489.34 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

§ 1489.35 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this part have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The control number for this information collection is 0551–0049.

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3838h–3838i.

SOURCE: 76 FR 4039, Jan. 24, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements will be administered under the regulations in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1491.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS will—

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land will not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine eligibility of the land, landowner, State government, local government, Indian Tribe, or nongovernmental organization;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the Commodity Credit Corporation (CCC) with the selected eligible entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS will enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

§ 1491.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

Agricultural uses are defined by the State's FRPP or equivalent, or where no program exists. Agricultural uses should be defined by the State agricultural use tax assessment program. However, if NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect agricultural use and related conservation values.

Certified entity means an eligible entity that NRCS has determined to meet the requirements of §1491.4(d) of this part.

Chief means the Chief of NRCS or designee.

Commodity Credit Corporation is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. The CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

Conservation easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is developed by NRCS in consultation with the landowner through the local soil conservation district, in consultation with the local committees, established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.

Dedicated fund means an account held by a nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.

Eligible entity means Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to non-agricultural uses of the land.

Eligible land means privately owned land on a farm or ranch that NRCS has determined to meet the requirements of §1491.4(f) of this part.

Fair market value means the value of a conservation easement as ascertained through standard real property appraisal methods, as established in §1491.4(g).

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of agricultural business on the conserved land. The farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers or ranchers.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The Field Office Technical Guide (FOTG) contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest land means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

Forest land of statewide importance means forest land that the State Conservationist, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State, and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by the State Conservationist. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Imminent harm means easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values; for example, those violations that

would adversely impact agriculture use, productivity, and related conservation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Land Evaluation and Site Assessment System means the land evaluation system approved by the State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. For additional information *see* the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

Natural Resources Conservation Service means an agency of the Department of Agriculture.

Nongovernmental organization means any organization that:

(1) Is organized for, and at all times since, the formation of the organization, and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) and (2) of that Code, or

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Other interests in land include any right in real property other than easements that are recognized by State law. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland and farm and ranch land of statewide and local importance.

Parcel means a farm or ranch submitted for consideration for funding under this part.

Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by the Secretary.

Purchase price means the appraised fair market value of the easement minus the landowner donation.

Right of enforcement means a vested right set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the grantee, that the Chief, on behalf of the United States, may exercise under specific circumstances in order to enforce the terms of the conservation easement when not enforced by the holder of the easement.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the

Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

§ 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of the CCC, will facilitate and provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting non-agricultural uses of the land. Eligible entities submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the eligible entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements or other interests in land will be in perpetuity unless prohibited by State law. In States that limit the term of the easement or other interest in land, the term of the easement or other interest in land must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be considered for certification, an entity must submit a written request for certification to NRCS, and must:

(1) Meet the requirements identified in paragraph (c) of this section;

(2) Use or agree to use for FRPP funded acquisitions, the Uniform Standards for Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions in conducting appraisals;

(3) Hold, manage, and monitor a minimum of 25 agricultural land conservation easements, unless the entity requests and receives a waiver of this requirement from the Chief;

(4) Hold, manage, and monitor a minimum of five FRPP or Farmland Protection Program conservation easements;

(5) Have the demonstrated ability to complete acquisition of easements in a timely fashion;

(6) Have the capacity to enforce the provisions of easement deeds;

(7) For nongovernmental organizations, possess a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity;

(8) Be willing to adjust procedures to ensure that the conservation easements acquired meet FRPP purposes and are enforceable; and

(9) Have a plan for administering easements enrolled under this part, as determined by the Chief.

(e) NRCS will notify an entity in writing whether they have been certified and the rationale for the agency's decision. Once NRCS determines an entity qualifies as certified:

(1) NRCS will enter into a cooperative agreement with the certified entity through which NRCS may obligate funding for up to 5 years. New parcels or prior-year unfunded parcels submitted for funding by certified entities must compete for funding each year. Selected parcels and funding will be added to the existing cooperative agreement using an amendment to the cooperative agreement. Funding expiration dates for the added parcels will be in the amendment to the cooperative agreement;

(2) NRCS will accept applications from certified entities continuously throughout the fiscal year;

(3) Certified entities may elect to close easements without NRCS approving the conservation easement deeds, titles, or appraisals before closing;

(4) Certified entities will prepare the conservation easement deeds, titles, and appraisals according to NRCS requirements as identified in the cooperative agreement;

(5) NRCS will conduct quality assurance reviews of a percentage of the conservation easement transactions submitted by the certified entity for payment. The review will include whether the deed, title review, or appraisals were conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity; and

(6) If a certified entity closes on the easement without a pre-closing NRCS review, and the conservation easement deed, title, or appraisal fails the NRCS quality assurance review, NRCS will provide the certified entity an opportunity to correct the errors. If the certified entity fails to correct the errors to NRCS satisfaction, NRCS may consider decertification of the entity in accordance with paragraph (f) of this section.

(f) *Review and decertification of the certified entity.* (1) The Chief will conduct a review of the certified entity a minimum of once every 3 years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief will:

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If the State Conservationist has determined the certified entity does not meet the criteria established in § 1491.4(d) after the 180 days, the State Conservationist will send, by certified mail, return receipt requested, written notice of proposed decertification of the entity's certification status or eligibility for future FRPP funding. This notice will contain what actions have not been completed to retain certification status, what actions the entity must take to request certification status, the status of funds in the cooperative agreement, and the eligibility of the entity to apply for future FRPP funds. The entity may contest the Notice of Decertification in writing to the State Conservationist within 20 calendar days of receipt of the notice of proposed decertification.

(3) The period of decertification may not exceed 3 years in duration, with duration of decertification based upon the seriousness of the facts; and

(4) The entity may be recertified upon application to NRCS, after the decertification period has expired, and when the entity has met the requirements as outlined under § 1491.4(d).

(g) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, statewide, or locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pastureland, or forest land

that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pastureland, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before closing, unless the Chief has reviewed and approved an alternative means by which the forest land's contribution to the economic viability of the land has been demonstrated;

(6) NRCS will not provide FRPP funds for the purchase of an easement or other interest in land on land owned in fee title by an agency of the United States, a State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in part 1400 of this title;

(8) Must possess suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program. Unsuitable conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant and may be offered for participation in the program. However, if an applicant submits an offer for an easement project, the Department of Agriculture (USDA) will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(h) Prior to closing, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions, as selected by the eligible entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality assurance purposes. Entities must provide a copy of the appraisal to NRCS.

(i) The landowner will be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985 (1985 Act), as amended and 7 CFR part 12.

(j) The entity may substitute acres within a pending offer. Substituted acres must not decrease the value of the offered easement or the value of the parcel in meeting program purposes. With the State Conservationist's approval, a cooperating entity may substitute pending offers within their cooperative agreement. The landowner and parcel must meet eligibility criteria as described in §1491.4(e). The State Conservationist may require reranking of substituted acres and substituted parcels.

[76 FR 4039, Jan. 24, 2011, as amended at 77 FR 6944, Feb. 10, 2012]

§ 1491.5 Application procedures.

(a) An Indian Tribe, State, unit of local government, or a nongovernmental organization will submit an application to the State Conservationist in the State where parcels are located.

(b) The State Conservationist will determine whether the Indian Tribe, State, unit of local government, or a

nongovernmental organization is eligible to participate in FRPP based on the criteria set forth in §1491.4(c).

(c) The Chief will determine whether an eligible entity is a certified entity based on the criteria set forth in §1491.4(d), information provided by the application, and data in the national FRPP database.

(d) The State Conservationist will notify each Indian Tribe, State, unit of local government, or a nongovernmental organization if it has been determined eligible, certified, or ineligible.

(e) Eligible entities with cooperative agreements entered into after the effective date of this part will not have to resubmit an annual application for the duration of the cooperative agreement. Entities may reapply for eligibility when their cooperative agreements expire.

(f) Throughout the fiscal year, eligible entities may submit to the appropriate State Conservationist applications for parcels, in that State, with supporting information to be scored, ranked, and considered for funding.

(g) At the end of each fiscal year, the lists of pending, unfunded parcels will be cancelled unless the eligible entity requests that specific parcels be considered for funding in the next fiscal year. Entities must submit a new list of parcels each fiscal year in order to be considered for funding unless they request that parcels from the previous fiscal year be considered.

§1491.6 Ranking considerations and proposal selection.

(a) Before the State Conservationist can score and rank the parcels for funding, the eligibility of the landowner and the land must be assessed.

(b) The State Conservationist will use national and State criteria to score and rank parcels. The national ranking criteria will be established by the Chief, and the State criteria will be determined by the State Conservationist, with advice from the State Technical Committee. The national criteria will comprise at least half of the ranking system score.

(c) At least 30 days before the ranking of parcels, the State Conservationist will announce the date on which ranking of parcels will occur. A State Conservationist may announce more than one date of ranking in a fiscal year.

(d) All parcels submitted throughout the fiscal year will be scored. All parcels will be ranked together in accordance with the national and State ranking criteria before parcels are selected for funding.

(e) The parcels selected for funding will be listed on the agreements of the entities that submitted the parcels, and the agreements will be signed by the State Conservationist and the eligible entity. Funds for each fiscal year's parcels will be obligated with a new signature each year on an amendment to the agreement. Parcels funded on each fiscal year's amendment will have a separate deadline for closing and requesting reimbursement.

(f) The national ranking criteria are:

(1) Percent of prime, unique, and important farmland in the parcel to be protected;

(2) Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Proximity of the parcel to other protected land, such as military installations, land owned in fee title by the United States or an Indian Tribe, State government or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(8) Proximity of the parcel to other agricultural operations and infrastructure; and

(9) Other additional criteria as determined by the Chief.

(g) State or local criteria as determined by the State Conservationist, with advice of the State Technical Committee, may include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The performance of an eligible entity's experience in managing and enforcing easements. Performance must be measured by the closing efficiency or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported. The number of years of an eligible entity's existence, budget, or staffing level will not be used as a ranking factor;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, and environmental benefits;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the Land Evaluation and Site Assessment system. This score serves as a measure of agricultural viability (access to markets and infrastructure); and

(7) Existence of a farm or ranch succession plan or similar plan established to encourage farm viability for future generations.

(h) State ranking criteria will be developed on a State-by-State basis. The State Conservationist will make available a full listing of applicable national and State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of the CCC, will enter into a cooperative agreement with entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary FRPP requirements. The cooperative agreement must address:

(1) The interests in land to be acquired, including the United States' right of enforcement, as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with FRPP funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with FRPP funds;

(5) The allowance of parcel substitution upon mutual agreement of the parties; and

(6) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(b) The term of cooperative agreements will be 5 years for certified entities and 3 years for other eligible entities.

(c) The cooperative agreement will include an attachment listing the parcels accepted by the State Conservationist. This list will include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information. The cooperative agreement template will be made available by the State Conservationist.

(d) The cooperative agreement will incorporate the provisions necessary for the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

§ 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the eligible entity, will determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement consistent with § 1491.4(g). An eligible entity will share in the cost of purchasing

a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The eligible entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(f) NRCS will conduct its technical and administrative review of appraisals and its hazardous materials reviews with FRPP funds.

(g) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist will not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(h) Environmental Services Credits:

(1) NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement;

(2) NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part; and

(3) If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement will require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum allowed under State law.

(c) The eligible entity may use its own terms and conditions in the conservation easement deed, but the conservation easement deed must be reviewed and approved by National Headquarters in advance of use. Individual conservation easement deeds used by the eligible entity will be submitted to National Headquarters at least 90 days before the planned closing date. Eligible entities with multiple parcels in a cooperative agreement may submit a conservation easement deed template for review and approval. The deed templates must be reviewed and approved by National Headquarters in advance of use. For eligible entities that have not been certified, the NRCS State offices will review prior to closing the conservation easement deeds for individual parcels to ensure that they contain the same language as approved by the national office and that the appropriate site-specific information has been included. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States. The Chief may exercise the option to promulgate standard minimum conservation deed requirements as a condition for receiving FRPP funds.

(d) The conveyance document must include a right of enforcement clause. NRCS will specify the terms for the right of enforcement clause to read as set forth in the FRPP cooperative agreement. This right is a vested property right and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the FOTG. NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the 1985 Act, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States,

through NRCS, its successors or assigns, a right of access to the easement area.

(f) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) NRCS will sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation will be provided to NRCS by the eligible entity.

(i) Impervious surfaces will not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. The State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces. Before waiving the 2 percent limitation, the State Conservationist must consider, at a minimum, population density, the ratio of open prime other important farmland versus impervious surfaces on the easement area, the impact to water quality concerns in the area, the type of agricultural operation, and parcel size. Eligible entities may submit an impervious surface limitation waiver process to the State Conservationist for review and consideration. The eligible entities must apply approved impervious surface limitation waiver processes on a parcel-by-parcel basis. State Conservationists will not approve blanket waivers of the impervious surface limitation for all parcels administered by the eligible entity without regard for the characteristics of individual parcels. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part. The conservation easement deed must require that NRCS approve any substantive amendment.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the easement terms, the eligible entity will notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the conservation easement as determined by the Chief, the Chief or his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States will be entitled to recover any and all administrative and legal costs from the participating eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation

easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The CCC's share will be in proportion to its percentage of original investment.

(f) In the event NRCS determines it must exercise its rights identified under a conservation easement or other interest in land, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

(a) If it is determined by NRCS that a eligible entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such an eligible entity during the applicable period may be withheld or be required to be refunded, with interest, as determined appropriate by NRCS on behalf of the CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, and depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

PART 1492 [RESERVED]

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

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AUTHORITY: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

SOURCE: 59 FR 52876, Oct. 19, 1994, unless otherwise noted.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

SOURCE: 79 FR 68595, Nov. 18, 2014, unless otherwise noted.

§ 1493.1 General statement.

This subpart sets forth the restrictions that apply to the issuance and use of Payment Guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee (GSM–102) Program and Facility Guarantee Program (FGP), the criteria considered by CCC in determining the annual allocations of Payment Guarantees to be made available with respect to each participating country and region, and the criteria considered by CCC in the review and approval of proposed allocation levels for specific U.S. Agricultural Commodities to these countries and regions.

§ 1493.2 Purposes of programs.

CCC is authorized to issue Payment Guarantees:

(a) To increase exports of U.S. Agricultural Commodities and expand access to trade finance;

(b) To assist countries, particularly developing countries and emerging markets, in meeting their food and fiber needs;

(c) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. Agricultural Commodities; or

(d) For such other purposes as the Secretary of Agriculture determines appropriate.

§ 1493.3 Restrictions on programs and cargo preference statement.

(a) *Restrictions on use of Payment Guarantees.* (1) Payment Guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities to any country that the Secretary determines cannot adequately

service the debt associated with such sale.

(3) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities financed by any Foreign Financial Institution that CCC determines cannot adequately service the debt associated with such sale.

(b) *Cargo preference laws.* The provisions of the cargo preference laws do not apply to export sales with respect to which Payment Guarantees are issued under these programs.

§ 1493.4 Criteria for country and regional allocations.

The criteria considered by CCC in reviewing proposals for country and regional allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion, or maintenance of the market for particular U.S. Agricultural Commodities in the importing country;

(b) Financial and economic ability and/or willingness of the country of obligation to adequately service CCC guaranteed debt (''country of obligation'' is the country whose Foreign Financial Institution obligation is guaranteed by CCC);

(c) Financial status of participating Foreign Financial Institutions in the country of obligation as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the country of obligation as it would affect its ability and/or willingness to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the country of obligation or by the participating Foreign Financial Institutions to CCC or to lenders protected by CCC's Payment Guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

The criteria considered by CCC in determining U.S. Agricultural Commodity allocations within a specific country or regional allocation will include, but not be limited to, the following:

(a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. Agricultural Commodity under consideration;

(b) The best use to be made of the Payment Guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country; and

(c) Evaluation, in terms of program purposes, of the relative benefits of providing Payment Guarantee coverage for sales of the U.S. Agricultural Commodity under consideration compared to providing coverage for sales of other U.S. Agricultural Commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) Operations

SOURCE: 79 FR 68596, Nov. 18, 2014, unless otherwise noted.

§ 1493.10 General statement.

(a) *Overview.* The Export Credit Guarantee (GSM–102) Program of the Commodity Credit Corporation (CCC) was developed to expand U.S. Agricultural Commodity exports by making available Payment Guarantees to encourage U.S. private sector financing of foreign purchases of U.S. Agricultural Commodities on credit terms. The Payment Guarantee issued under GSM–102 is an agreement by CCC to pay the Exporter, or the U.S. Financial Institution that may take assignment of the Payment Guarantee, specified amounts of principal and interest in case of default by the Foreign Financial Institution that issued the Letter of Credit for the export sale covered by the Payment Guarantee. Under the GSM–102 program, maximum repayment terms may vary based on risk of default, as determined by CCC. The program operates in a manner intended not to interfere with markets for cash sales and is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S.

agricultural exporters and assist long-term market development for U.S. Agricultural Commodities.

(b) *Program administration.* The GSM–102 program is administered under the direction of the General Sales Manager and Vice President of CCC, pursuant to this subpart, subpart A, and any Program Announcements issued by CCC. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the GSM–102 program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A. Program information, such as eligible U.S. Agricultural Commodities and approved U.S. and Foreign Financial Institutions, is available on the USDA Web site.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the USDA Web site to announce a GSM–102 program for a specific country or region. The Program Announcement for a country or region will designate specific U.S. Agricultural Commodities or products thereof, or designate that all eligible U.S. Agricultural Commodities are available under the announcement. The Program Announcement will contain any requirements applicable to that country or region as determined by CCC.

§ 1493.20 Definition of terms.

Terms set forth in this subpart, on the USDA Web site (including in Program Announcements and notices to participants), and in any CCC-originated documents pertaining to the GSM–102 Program will have the following meanings:

Affiliate. Entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Control may include, but is not limited to: Interlocking management or ownership; identity of interests among family members; shared facilities and equipment; or common use of employees.

Assignee. A U.S. Financial Institution that has obtained the legal right to make a claim and receive the payment of proceeds under the Payment Guarantee.

Business Day. A day during which employees of the U.S. Department of Agriculture in the Washington, DC metropolitan area are on official duty during normal business hours.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq).

CCC Late Interest. Interest payable by CCC pursuant to § 1493.180(c).

Cost and Freight (CFR). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Cost Insurance and Freight (CIF). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Date of Export. One of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

Date of Sale. The earliest date on which a Firm Export Sales Contract exists between the Exporter, or an Intervening Purchaser, if applicable, and the Importer.

Director. The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or the Director's designee.

Discounts and Allowances. Any consideration provided directly or indirectly, by or on behalf of the Exporter or an Intervening Purchaser, to the Importer in connection with an Eligible Export Sale, above and beyond the commodity's value, stated on the appropriate FOB, FAS, FCA, CFR or CIF basis (or other basis specified in Incoterms 2010, or as superseded), which includes, but is not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods,

services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the Importer requires the Exporter to employ and compensate a specified agent as a condition of concluding the Eligible Export Sale; the whole or partial release of the Importer from any financial or contractual obligations; or settlements made in favor of the Importer for quality or weight.

Eligible Export Sale. An export sale of U.S. Agricultural Commodities in which the obligation of payment for the portion registered under the GSM–102 program arises solely and exclusively from a Foreign Financial Institution Letter of Credit or Terms and Conditions Document issued in connection with a Payment Guarantee.

Eligible Interest. The amount of interest that CCC agrees to pay the Holder of the Payment Guarantee in the event that CCC pays a claim for default of Ordinary Interest. Eligible Interest shall be the lesser of:

(1) The amount calculated using the interest rate specified between the Holder of the Payment Guarantee and the Foreign Financial Institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the Payment Guarantee.

Exported Value. (1) Where CCC announces Payment Guarantee coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS, FCA or FOB, port of shipment, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the U.S. Agricultural Commodity is sold on a CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or

(3) When a CFR or CIF U.S. Agricultural Commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the Exported Value.

Exporter. A seller of U.S. Agricultural Commodities that is both qualified in accordance with the provisions of §1493.30 and the applicant for the Payment Guarantee.

Firm Export Sales Contract. The written sales contract entered into between the Exporter and the Importer (or, if applicable, the written sales contracts between the Exporter and the Intervening Purchaser and the Intervening Purchaser and the Importer) which sets forth the terms and conditions of an Eligible Export Sale of the eligible U.S. Agricultural Commodity from the Exporter to the Importer (or, if applicable, the sale of the eligible U.S. Agricultural Commodity from the Exporter to the Intervening Purchaser and from the Intervening Purchaser to the Importer). Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the GSM–102 program must, at a minimum, document the following information: The eligible U.S. Agricultural Commodity, quantity, quality specifications, delivery terms (FOB, C&F, FCA, etc.) to the eligible country or region, delivery period, unit price, payment terms, Date

of Sale, and evidence of agreement between Importer (and Intervening Purchaser, if applicable) and Exporter. The Firm Export Sales Contract between the Exporter and the Importer (or, if applicable, between the Exporter and the Intervening Purchaser and between the Intervening Purchaser and the Importer) may be conditioned upon CCC's approval of the Exporter's application for a Payment Guarantee.

Foreign Financial Institution. A financial institution (including foreign branches of U.S. financial institutions):

(1) Organized and licensed under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction (except for multilateral and sovereign institutions).

Foreign Financial Institution Letter of Credit or Letter of Credit. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices (UCP) for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), and, if electronic documents are to be utilized, the current revision of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP) providing for payment in U.S. dollars against stipulated documents and issued in favor of the Exporter by a CCC-approved Foreign Financial Institution.

Free Alongside Ship (FAS). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Free Carrier (FCA). A customary trade term for all modes of transportation, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Free on Board (FOB). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

GSM. The General Sales Manager, Foreign Agricultural Service, USDA, acting in his or her capacity as Vice President, CCC, or designee.

Guaranteed Value. The maximum amount indicated on the face of the Payment Guarantee, exclusive of interest, that CCC agrees to pay the Holder of the Payment Guarantee.

Holder of the Payment Guarantee. The Exporter or the Assignee of the Payment Guarantee with the legal right to make a claim and receive the payment of proceeds from CCC under the Payment Guarantee in case of default by the Foreign Financial Institution.

Importer. A foreign buyer that enters into a Firm Export Sales Contract with an Exporter or with an Intervening Purchaser for the sale of the U.S. Agricultural Commodities to be shipped from the United States to the destination country or region under the Payment Guarantee.

Importer's Representative. An entity having a physical office and that is either organized under the laws of or registered to do business in the destination country or region specified in the Payment Guarantee and that is authorized to act on the Importer's behalf with respect to the sale described in the Firm Export Sales Contract.

Incoterms. Trade terms developed by the International Chamber of Commerce in Incoterms 2010 (or latest revision) which define the respective obligations of the buyer and seller in a sales contract.

Intervening Purchaser. A party that is not located in the country or region of destination specified in the Payment Guarantee and that enters into a Firm Export Sales Contract to purchase U.S. Agricultural Commodities from an Exporter and sell the same U.S. Agricultural Commodities to an Importer.

Ordinary Interest. Interest (other than Post Default Interest) charged on the principal amount identified in the Foreign Financial Institution Letter of Credit or, if applicable, the Terms and Conditions Document.

Payment Guarantee. An agreement under the GSM–102 program by which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the Exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements, agrees to

pay the Holder of the Payment Guarantee in the event of a default by a Foreign Financial Institution on its Repayment Obligation under the Foreign Financial Institution Letter of Credit issued in connection with a guaranteed sale or, if applicable, under the Terms and Conditions Document.

Port Value. (1) Where CCC announces coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, port of shipment, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, port of destination, the value of the export sale, FAS, FCA, or FOB, port of shipment, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(2) Where CCC announces coverage on a CFR or CIF basis and where the U.S. Agricultural Commodity was sold on CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(3) When a CFR or CIF U.S. Agricultural Commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the Port Value.

Post Default Interest. Interest charged on amounts in default that begins to accrue upon default of payment, as specified in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document.

Principal. A principal of a corporation or other legal entity is an individual serving as an officer, director, owner, partner, or other individual with management or supervisory responsibilities for such corporation or legal entity.

Program Announcement. An announcement issued by CCC on the USDA Web site that provides information on specific country and regional programs and may identify eligible U.S. Agricultural Commodities and countries, length of credit periods which may be covered, and other information.

Repayment Obligation. A contractual commitment by the Foreign Financial Institution issuing the Letter of Credit in connection with an Eligible Export Sale to make payment(s) on principal amount(s), plus any Ordinary Interest and Post Default Interest, in U.S. dollars, to an Exporter or U.S. Financial Institution on deferred payment terms consistent with those permitted under CCC's Payment Guarantee. The Repayment Obligation must be documented using one of the methods specified in §1493.90.

Repurchase Agreement. A written agreement under which the Holder of the Payment Guarantee may from time to time enter into transactions in which the Holder of the Payment Guarantee agrees to sell to another party Foreign Financial Institution Letter(s) of Credit and, if applicable, Terms and Conditions Document(s), secured by the Payment Guarantee, and repurchase the same Foreign Financial Institution Letter(s) of Credit and Terms and Conditions Documents secured by the Payment Guarantee, on demand or date certain at an agreed upon price.

SAM (System for Award Management). A Federal Government owned and operated free Web site that contains information on parties excluded from receiving Federal contracts or certain subcontracts and excluded from certain

types of Federal financial and nonfinancial assistance and benefits.

Terms and Conditions Document. A document specifically identified and referred to in the Foreign Financial Institution Letter of Credit which may contain the Repayment Obligation and other special requirements specified in §1493.90.

United States or U.S. Each of the States of the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

U.S. Agricultural Commodity or U.S. Agricultural Commodities. (1)(i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

USDA. United States Department of Agriculture.

U.S. Financial Institution. A financial institution (including U.S. branches of Foreign Financial Institutions):

(1) Organized and licensed under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

Weighted Average Export Date. The mean Date of Export for all exports within a 30 calendar day period, weighted by the guaranteed portion of the Exported Value of each export.

§1493.30 Information required for Exporter participation.

Exporters must apply and be approved by CCC to be eligible to participate in the GSM–102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM–102 program, an applicant must submit the following information to CCC in the manner specified on the USDA Web site:

(1) For the applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the GSM–102 export sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) Email address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The form of business entity of the applicant (e.g., sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories and possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office. A post office box is not an acceptable address; and

(ii) Telephone and fax numbers.

(3) For the applicant's agent for the service of process:

(i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;

(ii) Telephone and fax numbers;
(iii) Email address (if applicable); and
(iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (e.g., agricultural producer, commodity trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history with U.S. Agricultural Commodities for the preceding three years, including a description of such commodities;

(iii) Explanation of the applicant's experience/history exporting U.S. Agricultural Commodities, including number of years involved in exporting, types of products exported, and destination of exports for the preceding three years; and

(iv) Whether or not the applicant is a ''small or medium enterprise'' (SME) as defined on the USDA Web site;

(5) A listing of any related companies (e.g., Affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: ''All certifications set forth in 7 CFR 1493.60(a) are hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.60(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any Exporter not submitting an application to CCC for a Payment Guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in §1493.30(a) to CCC to participate in the GSM–102 program. If at any time the information required by paragraph (a) of this section changes, the Exporter must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM–102 program if such applicant cannot provide all of the information and certifications required by paragraph (a) of this section.

§1493.40 Information required for U.S. Financial Institution participation.

U.S. Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM–102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM–102 Program, a U.S. Financial Institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year-end audited financial statements for the applicant's most recent fiscal year;

(5) Breakdown of the applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, Affiliate, or branch of another financial institution);

(7) Documentation from the applicable United States Federal or State

agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: ''All certifications set forth in 7 CFR 1493.60 are hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.60. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. Financial Institution not participating in the GSM–102 program for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in paragraph (a) of this section to CCC to participate in the GSM–102 program. If at any time the information required by paragraph (a) of this section changes, the U.S. Financial Institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

(d) *Ineligibility for program participation.* A U.S. Financial Institution may be deemed ineligible to participate in the GSM–102 Program if such applicant cannot provide all of the information and certifications required by paragraph (a) of this section.

§1493.50 Information required for Foreign Financial Institution participation.

Foreign Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM–102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM–102 program, a Foreign Financial Institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Year end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, Affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: ''All certifications set forth in 7 CFR 1493.60 are hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.60. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the Foreign Financial Institution is eligible for participation, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this Foreign Financial Institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified Foreign Financial Institution shall submit annually to CCC the certifications in §1493.60 and its audited fiscal year-end financial statements in accordance with the accounting standards established by the applicant's regulators, in English, so that CCC may determine the continued ability of the Foreign Financial Institution to adequately service CCC guaranteed debt. If the Foreign Financial Institution is not subject to a banking or other financial regulatory authority, it should submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the Foreign Financial Institution's dollar participation limit. Any Foreign Financial Institution not participating in the GSM–102 program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the Foreign Financial Institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. Additionally, if at any time the information required by paragraph (a) of this section changes, the Foreign Financial Institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(e) *Ineligibility for program participation.* A Foreign Financial Institution may be deemed ineligible to participate in the GSM–102 program if:

(1) Such applicant cannot provide all of the information and certifications required in paragraph (a) of this section; or

(2) Based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the Payment Guarantees issued by CCC.

§ 1493.60 Certifications required for program participation.

(a) When making the statement required by §§1493.30(a)(7), 1493.40(a)(9), or 1493.50(a)(6), each Exporter, U.S. Financial Institution and Foreign Financial Institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation is not controlled by an officer, director, or shareholder who owes a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation does not control a wholly-owned or partially-owned subsidiary which owes a debt).

(b) *Additional certifications for U.S. and Foreign Financial Institution applicants.* When making the statement required by §1493.40(a)(9) or §1493.50(a)(6), each U.S. and Foreign Financial Institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and its Principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and its U.S. Principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001, and the Foreign Corrupt Practices Act of 1977.

[79 FR 68596, Nov. 18, 2014, as amended at 84 FR 28186, June 18, 2019]

§1493.70 Application for Payment Guarantee.

(a) A Firm Export Sales Contract for an Eligible Export Sale must exist before an Exporter may submit an application for a Payment Guarantee. Upon request by CCC, the Exporter must provide evidence of a Firm Export Sales Contract. An application for a Payment Guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site. An application must identify the name and address of the Exporter and include the following information:

(1) Name of the destination country or region. If the destination is a region, indicate the country or countries within the region to which the U.S. Agricultural Commodity will be exported.

(2) Name and address of the Importer. If the Importer is not physically located in the country or region of destination, it must have an Importer's Representative in the country or region of destination. If applicable, provide the name and address of the Importer's Representative.

(3) A statement that the U.S. Agricultural Commodity will be shipped to the destination country or region.

(4) Name and address of the party on whose request the Letter of Credit is issued, if other than the Importer.

(5) Name and address of the Intervening Purchaser, if any.

(6) Date of Sale.

(7) Exporter's sale number.

(8) Delivery period as agreed between the Exporter and the Importer.

(9) A full description of the U.S. Agricultural Commodity (including packaging, if any). The description must include the applicable six-digit Harmonized System commodity classification code. The commodity grade and quality specified in the Exporter's application for the Payment Guarantee must correspond with the commodity grade and quality specified in the Firm Export Sales Contract and the Foreign Financial Institution Letter of Credit.

(10) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted.

(11) Unit sales price of the U.S. Agricultural Commodity, or a mechanism to establish the price, as agreed between the Exporter and the Importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.

(12) Description and value of Discounts and Allowances, if any.

(13) Port Value (includes upward loading tolerance, if any).

(14) Guaranteed Value.

(15) Guarantee fee, either as announced on the Web site per §1493.110(a)(1), or the competitive fee bid per §1493.110(a)(2), depending on the

type of fee charged by CCC for the country or region.

(16) Name and location of the Foreign Financial Institution issuing the Letter of Credit and, upon request by CCC, written evidence that the Foreign Financial Institution has agreed to issue the Letter of Credit.

(17) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.

(18) The Exporter's statement, ''All certifications set forth in 7 CFR 1493.80 are hereby being made by the Exporter in this application.'' which, when included in the application by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.80.

(b) An application for a Payment Guarantee may be approved as submitted, approved with modifications agreed to by the Exporter, or rejected by the Director. In the event that the application is approved, the Director will cause a Payment Guarantee to be issued in favor of the Exporter. Such Payment Guarantee will become effective at the time specified in § 1493.100(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.80 Certification requirements for obtaining Payment Guarantee.

By providing the statement in § 1493.70(a)(18), the Exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been met. The Exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. If the Exporter makes false certifications with respect to a Payment Guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any commodities not yet exported and/or to commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting an application for a Payment Guarantee and providing the statement set forth in § 1493.70(a)(18), certifies that:

(a) The commodity or product covered by the Payment Guarantee is a U.S. Agricultural Commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) At the time of submission of the application for Payment Guarantee, neither the Importer nor the Intervening Purchaser, if applicable, is present as an excluded party on the SAM list;

(e) The Exporter is fully in compliance with the requirements of § 1493.130(b) for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per § 1493.130(b)(3); and

(f) The information provided pursuant to § 1493.30 has not changed and the Exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.90 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.

(a) *Permitted mechanisms to document special requirements.* (1) A Foreign Financial Institution Letter of Credit is required in connection with the export sale to which CCC's Payment Guarantee pertains.

(i) The Letter of Credit must stipulate presentation of at least one original clean on board bill of lading as a required document, unless:

(A) The Exporter, or a related company previously reported to CCC by the Exporter pursuant to §1493.30(a)(5), is named as the shipper on the clean on board bill of lading. If the Exporter or a related company is named the shipper on the bill of lading, the Letter of Credit may stipulate a copy or photocopy of an original clean on board bill of lading; or

(B) The Letter of Credit stipulates presentation of electronic documents per paragraph (a)(1)(ii) of this section.

(ii) If the Letter of Credit will allow for presentation of electronic documents, the Letter of Credit must so stipulate.

(2) The use of a Terms and Conditions Document is optional. The Terms and Conditions Document, if any, must be specifically identified and referred to in the Foreign Financial Institution Letter of Credit.

(3) The special requirements in paragraph (b) of this section must be documented in one of the two following ways:

(i) The special requirements may be set forth in the Foreign Financial Institution Letter of Credit as a special instruction from the Foreign Financial Institution; or

(ii) The special requirements may be set forth in a separate Terms and Conditions Document.

(b) *Special requirements.* The following provisions are required and must be documented in accordance with paragraph (a) of this section:

(1) The terms of the Repayment Obligation, including a specific promise by the Foreign Financial Institution issuing the Letter of Credit to pay the Repayment Obligation;

(2) The following language: ''In the event that the Commodity Credit Corporation (''CCC'') is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.'';

(3) A provision permitting the Holder of the Payment Guarantee to declare all or any part of the Repayment Obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the Letter of Credit or, if applicable, the Terms and Conditions Document; and

(4) Post Default Interest terms.

§1493.100 Terms and requirements of the Payment Guarantee.

(a) *CCC's obligation.* The Payment Guarantee will provide that CCC agrees to pay the Holder of the Payment Guarantee an amount not to exceed the Guaranteed Value, plus Eligible Interest, in the event that the Foreign Financial Institution fails to pay under the Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* (1) The Holder of the Payment Guarantee may, with respect to a series of shipments made within a 30 calendar day period, elect to have the Payment Guarantee coverage being on the Weighted Average Export Date for such shipments. The first allowable 30 calendar day period for bundling of shipments to compute the Weighted Average Export Date for such shipments begins on the first Date of Export for transactions covered by the Payment Guarantee. Shipments within each subsequent 30 calendar day period may be bundled with other shipments made within the same 30 calendar period to determine the Weighted Average Export Date for such shipments.

(2)(i) The period of coverage under the Payment Guarantee begins on the earlier of the following dates and will continue during the credit term specified on the Payment Guarantee or any amendments thereto:

(A) The Date(s) of Export or the Weighted Average Export Date(s), as selected by the Holder of the Payment Guarantee consistent with paragraph (b)(1) of this section; or

(B) The date when Ordinary Interest begins to accrue, or the weighted average date when interest begins to accrue.

(ii) However, the Payment Guarantee becomes effective on the Date(s) of Export of the U.S. Agricultural Commodities specified in the Exporter's application for the Payment Guarantee.

(c) *Terms of the CCC Payment Guarantee.* The terms of CCC's coverage will be set forth in the Payment Guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and notices to participants in effect at the time the Payment Guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the Payment Guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The Exporter may apply for a Payment Guarantee and, if coverage is available, pay the guarantee fee, based on the mean of the lower and upper loading tolerances of the Firm Export Sales Contract; however, the Exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the Firm Export Sales Contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to ten (10) percent of the Port Value of the sale. If such additional guarantee coverage is available at the time of application and the Director determines to make such reservation, CCC will so indicate to the Exporter. In the event that the Exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., the mean of the upper and lower loading tolerances), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an application for amendment to the Payment Guarantee, and by paying the additional amount of fee applicable. If such application for an amendment to the Payment Guarantee is not filed with CCC by the Exporter and the additional fee not received by CCC within 30 calendar days after the date of the last export against the Payment Guarantee, CCC may cancel the reserve coverage originally set aside for the Exporter.

(f) *Certain export sales are ineligible for GSM–102 Payment Guarantees.* (1) An export sale (or any portion thereof) is ineligible for Payment Guarantee coverage if at any time CCC determines that:

(1) The commodity is not a U.S. Agricultural Commodity;

(2) The export sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the export sale;

(3) The export sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(4) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, any of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(5) Either the Importer or the Intervening Purchaser, if any, is excluded or disqualified from participation in U.S. government programs; or

(6) The sale is not an Eligible Export Sale.

(g) *Certain exports of U.S. Agricultural Commodities are ineligible for Payment Guarantee coverage.* The following exports are ineligible for coverage under a GSM–102 Payment Guarantee except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such exports:

(1) Exports of U.S. Agricultural Commodities with a Date of Export prior to the date of receipt by CCC of the Exporter's written application for a Payment Guarantee;

(2) Exports of U.S. Agricultural Commodities with a Date of Export later than the final date to export shown on the Payment Guarantee or any amendments thereof;

(3) Exports of U.S. Agricultural Commodities where the date of issuance of

a Foreign Financial Institution Letter of Credit is later than 30 calendar days after:

(i) The Date of Export, or

(ii) The Weighted Average Export Date, if the Holder of the Payment Guarantee has elected to have the Payment Guarantee coverage begin on the Weighted Average Export Date; or

(4) Exports of U.S. Agricultural Commodities that have been guaranteed by CCC under another Payment Guarantee. If CCC determines that an export of U.S. Agricultural Commodities has been guaranteed under multiple Payment Guarantees (or coverage has been requested under multiple Payment Guarantees), CCC will determine which Payment Guarantee (or application for Payment Guarantee), if any, corresponds to an Eligible Export Sale.

(h) *Additional requirements.* The Payment Guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the Payment Guarantee are binding on the Exporter and the Assignee.

(i) *Amendments.* A request for an amendment of a Payment Guarantee may be submitted only by the Exporter, with the written concurrence of the Assignee, if any. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and sufficient budget authority exists. Any amendment to the Payment Guarantee, particularly those that result in an increase in CCC's liability under the Payment Guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the Exporter to justify the request and to charge a fee for amendments. Such fees will be announced and available on the USDA Web site. Any request to amend the Foreign Financial Institution on the Payment Guarantee will require that the Holder of the Payment Guarantee resubmit to CCC the certifications in §1493.120(c)(1)(i) or §1493.140(d).

§1493.110 Guarantee fees.

(a) *Guarantee fee rates.* Payment Guarantee fee rates charged may be one of the following two types:

(1) Those that are announced on the USDA Web site and are based upon the length of the payment terms provided for in the Firm Export Sales Contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration.

(2) Those where Exporters are invited to submit a competitive bid for coverage. If CCC determines to offer coverage on a competitive fee bid basis, instructions for bidding, and minimum fee rates, if applicable, will be made available on the USDA Web site.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the Guaranteed Value by the guarantee fee rate.

(c) *Payment of fee.* The Exporter shall remit, with his application, the full amount of the guarantee fee. Applications will not be accepted until the guarantee fee has been received by CCC. The Exporter's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the USDA Web site.

(d) *Refunds of fee.* Guarantee fees paid in connection with applications that are accepted by CCC will ordinarily not be refundable. Once CCC notifies an Exporter of acceptance of an application, the fee for that application will not be refunded unless the Director determines that such refund will be in the best interest of CCC, even if the Exporter withdraws the application prior to CCC's issuance of the Payment Guarantee. If CCC does not accept an application for a Payment Guarantee or accepts only part of the guarantee coverage requested, a full or pro rata refund of the fee will be made.

§1493.120 Assignment of the Payment Guarantee.

(a) *Requirements for assignment.* The Exporter may assign the Payment Guarantee only to a U.S. Financial Institution approved for participation by CCC. The assignment must cover all amounts payable under the Payment Guarantee not already paid, may not

be made to more than one party, and may not, unless approved in advance by CCC, be:

(1) Made to one party acting for two or more parties, or

(2) Subject to further assignment.

(b) *CCC to receive notice of assignment of payment guarantee.* A notice of assignment signed by the parties thereto must be filed with CCC by the Assignee in the manner specified on the USDA Web site. The name and address of the Assignee must be included on the written notice of assignment. The notice of assignment should be received by CCC within 30 calendar days of the date of assignment.

(c) *Required certifications.* (1) The U.S. Financial Institution must include the following certification on the notice of assignment: ''I certify that:

(i) [Name of Assignee] has verified that the Foreign Financial Institution, at the time of submission of the notice of assignment, is not present as an excluded party on the SAM list; and

(ii) To the best of my knowledge and belief, the information provided pursuant to §1493.40 has not changed and [name of Assignee] still meets all of the qualification requirements of §1493.40.''

(2) If the Assignee makes a false certification with respect to a Payment Guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the Payment Guarantee, reject the assignment of the Payment Guarantee, and/or commence legal action and/or administrative proceedings against the Assignee.

(d) *Notice of eligibility to receive assignment.* In cases where a U.S. Financial Institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. Financial Institution and to the Exporter issued the Payment Guarantee.

(e) *Ineligibility of U.S. Financial Institutions to receive an assignment and proceeds.* A U.S. Financial Institution will be ineligible to receive an assignment of a Payment Guarantee or the proceeds payable under a Payment Guarantee if such U.S. Financial Institution:

(1) At the time of assignment of a Payment Guarantee, is not in compliance with all requirements of 1493.40(a); or

(2) Is the branch, agency, or subsidiary of the Foreign Financial Institution issuing the Letter of Credit; or

(3) Is owned or controlled by an entity that owns or controls the Foreign Financial Institution issuing the Letter of Credit; or

(4) Is the U.S. parent of the Foreign Financial Institution issuing the Foreign Financial Institution Letter of Credit; or

(5) Is owned or controlled by the government of a foreign country and the Payment Guarantee has been issued in connection with export sales of U.S. Agricultural Commodities to Importers located in such foreign country.

(f) *Repurchase agreements.* (1) The Holder of the Payment Guarantee may enter into a Repurchase Agreement, to which the following requirements apply:

(i) Any repurchase under a Repurchase Agreement by the Holder of the Payment Guarantee must be for the entirety of the outstanding balance under the associated Repayment Obligation;

(ii) In the event of a default with respect to the Repayment Obligation subject to a Repurchase Agreement, the Holder of the Payment Guarantee must immediately effect such repurchase; and

(iii) The Holder of the Payment Guarantee must file all documentation required by §§1493.160 and 1493.170 in case of a default by the Foreign Financial Institution under the Payment Guarantee.

(2) The Holder of the Payment Guarantee shall, within five Business Days of execution of a transaction under the Repurchase Agreement, notify CCC of the transaction in writing in the manner specified on the USDA Web site. Such notification must include the following information:

(i) Name and address of the other party to the Repurchase Agreement;

(ii) A statement indicating whether the transaction executed under the Repurchase Agreement is for a fixed term or if it is terminable upon demand by

either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: ''[Name of Holder of the Payment Guarantee] has entered into a Repurchase Agreement that meets the provisions of 7 CFR 1493.120(f)(1) and, prior to entering into this agreement, verified that [name of other party to the Repurchase Agreement] is not present as an excluded party on the SAM list.''

(3) Failure of the Holder of the Payment Guarantee to comply with any of the provisions of paragraph (f) of this section may result in CCC annulling coverage on the Foreign Financial Institution Letter of Credit and Terms and Conditions Document, if applicable, covered by the Payment Guarantee.

§ 1493.130 Evidence of export.

(a) *Report of export.* The Exporter is required to provide CCC an evidence of export report for each shipment made under the Payment Guarantee. This report must include the following information:

(1) Payment Guarantee number;

(2) Evidence of export report number (e.g., Report 1, Report 2) reflecting the report's chronological order of submission under the particular Payment Guarantee;

(3) Date of Export;

(4) Destination country or region. If the sale was registered under a regional program, the Exporter must indicate the specific country or countries within the region to which the goods were shipped;

(5) Exporter's sale number;

(6) Exported Value;

(7) Quantity;

(8) A full description of the commodity exported, including the applicable six-digit Harmonized System commodity classification code;

(9) Unit sales price received for the commodity exported and the Incoterms 2010 basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the Exporter's application for a Payment Guarantee, the Exporter is also required to submit a statement explaining the reason for the difference;

(10) Description and value of Discounts and Allowances, if any;

(11) The Exporter's statement, ''All certifications set forth in 7 CFR 1493.140 are hereby being made by the Exporter in this Evidence of Export.'' which, when included in the evidence of export by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.140; and

(12) In addition to all of the above information, the final evidence of export report for the Payment Guarantee must include the following:

(i) The statement ''Exports under the Payment Guarantee have been completed.''

(ii) A statement summarizing the total quantity and value of the commodity exported under the Payment Guarantee (i.e., the cumulative totals on all numbered evidence of export reports).

(b) *Time limit for submission of evidence of export.* (1) The Exporter must provide a written report to the CCC in the manner specified on the USDA Web site within 30 calendar days of the Date of Export.

(2) If at any time the Exporter determines that no shipments are to be made under a Payment Guarantee, the Exporter is required to notify CCC in writing no later than the final date to export specified on the Payment Guarantee by furnishing the Payment Guarantee number and stating ''no exports will be made under the Payment Guarantee.''

(3) Requests for an extension of the time limit for submitting an evidence of export report must be submitted in writing by the Exporter to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted if such extension is requested prior to the expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for Payment Guarantees from an Exporter under §1493.70

until the Exporter is fully in compliance with the requirements of paragraph (b) of this section for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per paragraph (b)(3) of this section.

(d) *Export sales reporting.* Exporters have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), for exports of certain agricultural commodities and products thereof.

§ 1493.140 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.130(a)(11), the Exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been met. The Exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the Exporter makes false certifications with respect to a Payment Guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any commodities not yet exported and/or to commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting the evidence of export and providing the statement set forth in § 1493.130(a)(11), certifies that:

(a) The agricultural commodity or product exported under the Payment Guarantee is a U.S. Agricultural Commodity;

(b) The U.S. Agricultural Commodity was shipped directly to the country or region specified on the Payment Guarantee;

(c) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the export sale, and that the export sale complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(d) If the Exporter has not assigned the Payment Guarantee to a U.S. Financial Institution, the Exporter has verified that the Foreign Financial Institution, at the time of submission of the evidence of export report, is not present as an excluded party on the SAM list;

(e) The transaction is an Eligible Export Sale; and

(f) The information provided pursuant to §§ 1493.30 and 1493.70 has not changed (except as agreed to and amended by CCC) and the Exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.150 Proof of entry.

(a) *Diversion.* The diversion of U.S. Agricultural Commodities covered by a Payment Guarantee to a country or region other than that shown on the Payment Guarantee is prohibited, unless expressly authorized in writing by the Director.

(b) *Records of proof of entry.* (1) Exporters must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the U.S. Agricultural Commodities exported in connection with the GSM–102 program in the country or region that was the intended country or region of destination of such commodities. At the Director's request, the Exporter must submit to CCC records demonstrating proof of entry. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by an agent or representative of the vessel or shipline that delivered the U.S. Agricultural Commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the Director showing:

(i) That the U.S. Agricultural Commodity entered the importing country or region;

(ii) The identification of the export carrier;

(iii) The quantity of the U.S. Agricultural Commodity;

(iv) The kind, type, grade and/or class of the U.S. Agricultural Commodity; and

(v) The date(s) and place(s) of unloading of the U.S. Agricultural Commodity in the importing country or region.

(2) Where shipping documents (e.g., bills of lading) clearly demonstrate that the U.S. Agricultural Commodities were shipped to the destination country or region, proof of entry verification may be provided by the Importer.

§ 1493.160 Notice of default.

(a) *Notice of default.* If the Foreign Financial Institution issuing the Letter of Credit fails to make payment pursuant to the terms of the Letter of Credit or the Terms and Conditions Document, the Holder of the Payment Guarantee must submit a notice of default to CCC as soon as possible, but not later than 5 Business Days after the date that payment was due from the Foreign Financial Institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the USDA Web site and must include the following information:

(1) Payment Guarantee number;

(2) Name of the country or region as shown on the Payment Guarantee;

(3) Name of the defaulting Foreign Financial Institution;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and Ordinary Interest, and including a copy of the repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment;

(6) Date of the Foreign Financial Institution's refusal to pay, if applicable;

(7) Reason for the Foreign Financial Institution's refusal to pay, if known, and copies of any correspondence with the Foreign Financial Institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the Holder of the Payment Guarantee fails to notify CCC of a default within 5 Business Days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing Payment Guarantees.* (1) In the event that a Foreign Financial Institution defaults under a Repayment Obligation, CCC may declare that such Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM–102 Program. If CCC determines that such defaulting Foreign Financial Institution is no longer eligible for the GSM–102 Program, CCC shall provide written notice of such ineligibility to all Exporters and Assignees, if any, having Payment Guarantees covering transactions with respect to which the defaulting Foreign Financial Institution is expected to issue a Letter of Credit. Receipt of written notice from CCC that a defaulting Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM–102 Program shall constitute withdrawal of coverage of that Foreign Financial Institution under all Payment Guarantees with respect to any Letter of Credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting Foreign Financial Institution under any Payment Guarantee with respect to any Letter of Credit issued before the date of receipt of such written notice.

(2) If CCC withdraws coverage of the defaulting Foreign Financial Institution, CCC will permit the Exporter (with concurrence of the Assignee, if any) to utilize another approved Foreign Financial Institution, and will consider other requested amendments to the Payment Guarantee, for the balance of the export sale covered by the Payment Guarantee. If no alternate Foreign Financial Institution is identified to issue the Letter of Credit within 30 calendar days, CCC will cancel the Payment Guarantee and refund the Exporter's guarantee fees corresponding to any unutilized portion of the Payment Guarantee.

§ 1493.170 Claims for default.

(a) *Filing a claim.* A claim by the Holder of the Payment Guarantee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the USDA Web site. The claim must

include the following documents and information:

(1) An original cover document signed by the Holder of the Payment Guarantee and containing the following information:

(i) Payment Guarantee number;

(ii) A description of:

(A) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the Exporter or the Assignee prior to submission of the claim; and

(B) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(iii) The following certifications:

(A) A certification that the scheduled payment has not been received, listing separately scheduled principal and Ordinary Interest;

(B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and Ordinary Interest;

(C) A certification that all documents submitted under paragraph (a)(3) of this section are true and correct copies; and

(D) A certification that all documents conforming with the requirements for payment under the Foreign Financial Institution Letter of Credit have been submitted to the negotiating bank or directly to the Foreign Financial Institution under such Letter of Credit.

(2) An original instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the Holder of the Payment Guarantee to the amount of payment in default under the applicable export sale. The instrument must reference the applicable Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document; and

(3) A copy of each of the following documents:

(i) The repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment (if the Ordinary Interest rates for future payments are unknown at the time the claim for default is submitted, provide estimates of such rates);

(ii)(A) The Foreign Financial Institution Letter of Credit securing the export sale; and

(B) If applicable, the Terms and Conditions Document;

(iii) Depending upon the method of shipment, the ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the importing country. If the transaction utilizes electronic bill(s) of lading (e-BL), a print-out of the e-BL from electronic system with an electronic signature is acceptable;

(iv)(A) The Exporter's invoice showing, as applicable, the FAS, FCA, FOB, CFR or CIF values; or

(B) If there was an Intervening Purchaser, both the Exporter's invoice to the Intervening Purchaser and the Intervening Purchaser's invoice to the Importer;

(v) The evidence of export report(s) previously submitted by the Exporter to CCC in conformity with the requirements of § 1493.130(a); and

(vi) If the defaulted payment was part of a transaction executed under a Repurchase Agreement, written evidence that the repurchase occurred as required under § 1493.120(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the Holder of the Payment Guarantee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the Holder of the Payment Guarantee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the Foreign Financial Institution to make scheduled installments on the same export shipment, the Holder of the Payment Guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i) and (ii) and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as

per paragraph (a)(2) of this section; and the date the original claim was filed with CCC.

(d) *Alternative satisfaction of Payment Guarantees.* CCC may establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a Payment Guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the Payment Guarantee and would not result in CCC paying more than the amount of CCC's obligation.

§ 1493.180 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.170, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable Payment Guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the Letter of Credit and, if applicable, the Terms and Conditions Document. If CCC determines that it is liable to the Holder of the Payment Guarantee, CCC will pay the Holder of the Payment Guarantee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any Payment Guarantee, not including any CCC Late Interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The Guaranteed Value as stated in the Payment Guarantee, plus Eligible Interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the Exporter or the Assignee); or

(2) The guaranteed percentage (as indicated in the Payment Guarantee) of the Exported Value indicated in the evidence of export, plus Eligible Interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the Exporter or the Assignee).

(c) *CCC Late Interest.* If CCC does not pay a claim within 15 Business Days of receiving the claim in good order, CCC Late Interest will accrue in favor of the Holder of the Payment Guarantee beginning with the sixteenth Business Day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC Late Interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC Late Interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the Firm Export Sales Contract, the Foreign Financial Institution Letter of Credit, the Terms and Conditions Document (if applicable), or any obligation owed by the Foreign Financial Institution to the Holder of the Payment Guarantee that is related to the Letter of Credit issued in favor of the Exporter, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare up to the entire amount of the unpaid balance, plus accrued Ordinary Interest, in default, require the Holder of the Payment Guarantee to invoke the acceleration provision in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document, require submission of all claims documents specified in § 1493.170, and

make payment to the Holder of the Payment Guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the Assignee*. If an Assignee submits a claim for default pursuant to Section 1493.170 and all documents submitted appear on their face to conform with the requirements of such section, CCC will not hold the Assignee responsible or take any action or raise any defense against the Assignee for any action, omission, or statement by the Exporter of which the Assignee has no knowledge.

§ 1493.190 Recovery of defaulted payments.

(a) *Notification*. Upon claim payment to the Holder of the Payment Guarantee, CCC will notify the Foreign Financial Institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies*. (1) In the event that monies related to the obligation in default are recovered by the Exporter or the Assignee from or on behalf of the defaulting party, the Importer, or any source whatsoever (excluding payments among CCC, the Exporter, and the Assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid to CCC. If such monies are not received by CCC within 15 Business Days from the date of recovery by the Exporter or the Assignee, such party will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the Exporter or the Assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(2) If CCC recovers monies that should be applied to a Payment Guarantee for which a claim has been paid by CCC, CCC will pay the Holder of the Payment Guarantee its pro rata share, if any, provided that the required information necessary for determining pro rata distribution has been furnished. If a required payment is not made by CCC within 15 Business Days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the Holder of the Payment Guarantee.

(c) *Allocation of recoveries*. Recoveries received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the Holder of the Payment Guarantee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default on the date the claim is paid by CCC. Once CCC has paid a particular claim under a Payment Guarantee, CCC pro-rates any collections it receives and shares these collections proportionately with the Holder of the Payment Guarantee until both CCC and the Holder of the Payment Guarantee have been reimbursed in full.

(d) *Liabilities to CCC*. Notwithstanding any other terms of the Payment Guarantee, under the following circumstances the Exporter or the Assignee will be liable to CCC for any amounts paid by CCC under the Payment Guarantee:

(1) The Exporter will be liable to CCC when and if it is determined by CCC that the Exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the Exporter for the purpose of obtaining the

Payment Guarantee or for fulfilling obligations under the GSM–102 program; and

(2) The Assignee will be liable to CCC when and if it is determined by CCC that the Assignee has engaged in fraud or otherwise violated program requirements.

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the Holder of the Payment Guarantee, the Holder of the Payment Guarantee and the Exporter will cooperate with CCC to effect recoveries from the Foreign Financial Institution and/or the Importer. Cooperation may include, but is not limited to, submission of documents to the Foreign Financial Institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in §1493.180(d); and other actions that do not increase the obligation of the Holder of the Payment Guarantee or the Exporter under the Payment Guarantee.

§ 1493.191 Additional obligations and requirements.

(a) *Maintenance of records, access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a Payment Guarantee, the Exporter and the Assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for U.S. Agricultural Commodities exported in connection with a Payment Guarantee, including those records generated and maintained by agents, Intervening Purchasers, and related companies involved in special arrangements with the Exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the Exporter and the Assignee, as applicable, during regular business hours from the effective date of the Payment Guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the Exporter's, Assignee's, agent's, Intervening Purchaser's or related company's books, records and accounts concerning transactions relating to the Payment Guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the Exporter and the Assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the Exporter in connection with the Payment Guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all Exporters and U.S. and Foreign Financial Institutions to review, and fully acquaint themselves with, all regulations, Program Announcements, and notices to participants relating to the GSM–102 program, as applicable. All Exporters and U.S. and Foreign Financial Institutions participating in the GSM–102 program are hereby on notice that they will be bound by this subpart and any terms contained in the Payment Guarantee and in applicable Program Announcements.

(c) *Submission of documents by Principals.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments) by Exporters, Assignees, or Foreign Financial Institutions under this subpart must be signed by a Principal of the Exporter, Assignee, or Foreign Financial Institution or their authorized designee(s). In cases where the designee is acting on behalf of the Principal, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the Exporter, Assignee, or Foreign Financial Institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee.* CCC may cancel a Payment Guarantee in the event that an Exporter makes a willful misstatement in the certifications in §§ 1493.80(b) and 1493.140(c) or if the Exporter fails to comply with the provisions of § 1493.150 or paragraph (a) of this section. However, notwithstanding the foregoing, CCC will not cancel its Payment Guarantee, if it determines, in its sole discretion, that an Assignee had no knowledge of the Exporter's misstatement or noncompliance at the time of assignment of the Payment Guarantee.

§ 1493.192 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the Exporter or the Assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the GSM–102 program, this subpart, the applicable Program Announcements and notices to participants, or the Payment Guarantee.

(2) The Exporter or the Assignee may seek reconsideration of a determination made by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the Exporter or the Assignee of the determination. The Exporter or the Assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary evidence submitted by the Exporter or the Assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the Exporter or the Assignee fails to request reconsideration of a determination by the Director, then the determination of the Director will be deemed final.

(3) If the Exporter or the Assignee requests reconsideration of a determination by the Director pursuant to paragraph (a)(2) of this section, and the Director upholds the original determination, then the Exporter or the Assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the Exporter or the Assignee fails to appeal the Director's final determination within 30 calendar days as provided in paragraph (b)(1) of this section, then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) An Exporter or Assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM for a determination of the Director. An appeal to the GSM must be made in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the Exporter or Assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the Exporter or Assignee does not request an administrative hearing, the Exporter or Assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the Exporter or Assignee to the GSM.

(3) If the Exporter or the Assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the Exporter or Assignee. This date will ordinarily be within 60 calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The Exporter or Assignee and/or its counsel may

present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the Exporter or Assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

(4) The decision of the GSM will be the final determination of CCC. The Exporter or Assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the Exporter or Assignee has violated the terms of this subpart or the Payment Guarantee by failing to comply with a determination made under this section, and the Exporter or Assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to take any measures available to CCC under applicable law.

(d) *Exporter's obligation to perform.* The Exporter will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the Payment Guarantee pending the conclusion of all procedures under this section.

§ 1493.195 Miscellaneous provisions.

(a) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the Payment Guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the Payment Guarantee if made with a corporation for its general benefit.

(b) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0004.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

SOURCE: 81 FR 65515, Sept. 22, 2016, unless otherwise noted.

§ 1493.200 General statement.

(a) *Overview.* The FGP of the Commodity Credit Corporation (CCC) was developed to expand U.S. agricultural commodity exports by making available payment guarantees to encourage U.S. private sector financing to establish or improve facilities or provide services or goods in emerging markets to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products. Such guarantees will primarily promote the export of U.S. agricultural commodities. CCC will give priority to transactions that encourage privatization of the agricultural sector or that benefit private farms and cooperatives in emerging markets, and for which nongovernmental persons agree to assume a relatively larger share of costs. The payment guarantee issued under FGP is an agreement by CCC to pay the seller, or the U.S. financial institution that may take assignment of the payment guarantee, specified amounts of principal and interest in case of default by the foreign financial institution that issued the letter of credit for the sale covered by the payment guarantee. The program is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and producers and assist long-term market development for U.S. agricultural commodities.

(b) *Program administration.* The FGP is administered under the direction of the General Sales Manager and Vice President, CCC, pursuant to this subpart, subpart A of this part, any program announcements issued by CCC, and, as applicable, the Organisation for

Economic Co-operation and Development's (OECD) Arrangement on Officially Supported Export Credits. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the FGP or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A of this part. Program information, including available program amounts, eligible countries, and approved U.S. and foreign financial institutions, is available on the USDA Web site.

§ 1493.210 Definition of terms.

Terms set forth in this part, on the USDA Web site (including in program announcements and notices to participants), and in any CCC-originated documents pertaining to the FGP will have the following meanings:

Affiliate. Entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Control may include, but is not limited to: Interlocking management or ownership; identity of interests among family members; shared facilities and equipment; or common use of employees.

Assignee. A U.S. financial institution that has obtained the legal right to make a claim and receive the payment of proceeds under the payment guarantee.

Business day. A day during which employees of the U.S. Department of Agriculture in the Washington, DC metropolitan area are on official duty during normal business hours.

Buyer. A foreign purchaser that enters into a firm sales contract with a seller for the sale of goods to be shipped to the destination country and/or U.S. services to be provided in the destination country.

Buyer's representative. An entity having a physical office that is either organized under the laws of or registered to do business in the destination country specified in the payment guarantee and that is authorized to act on the buyer's behalf with respect to the sale described in the firm sales contract.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

CCC late interest. Interest payable by CCC pursuant to § 1493.370(c).

Contractual event. A specific deliverable (activity or milestone) measured by objective or quantifiable methods within the firm sales contract which, when met by the seller, results in an obligation to make payment in accordance with the agreed contractual terms without recourse, and triggers the start of coverage under the payment guarantee. Such events may include, but are not limited to, exports of goods, completion of services, or commissioning date of equipment or a facility.

Cost of services. The price for services as stipulated in the firm sales contract.

Coverage waiver. A determination by CCC, upon request of the seller, to allow guarantee coverage of non-U.S. goods and/or to waive the U.S. content test in § 1493.290(e).

Date of performance. The date that a contractual event occurs in accordance with the firm sales contract. The date of performance may be, but is not limited to, an installation date, the date of completion of the service, the commissioning date of equipment or a facility, or the date of export of goods (one of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country).

Date of sale. The earliest date on which a firm sales contract exists between the seller and the buyer.

Destination country. The emerging market (location) of the agricultural-related facility that will use the goods and/or services covered by the payment guarantee. If the payment guarantee covers goods not intended for a specific facility, then the country where the goods will be delivered and utilized.

Director. The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or designee.

Discounts and allowances. Any consideration provided directly or indirectly, by or on behalf of the seller, to the buyer in connection with a sale of a good or service, above and beyond its value. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the buyer requires the seller to employ and compensate a specified agent as a condition of concluding the sale; the whole or partial release of the buyer from any financial or contractual obligations; or settlements made in favor of the buyer for quality or weight.

Eligible export sale. A transaction in which the obligation of payment for the portion registered under the FGP arises solely and exclusively from a foreign financial institution letter of credit or terms and conditions document issued in connection with a payment guarantee.

Eligible imported components. Imported components in U.S. goods that are eligible for coverage because either:

(1) The transaction meets the U.S. content test in §1493.290(e); or

(2) A coverage waiver of the U.S. content test has been requested by the seller and approved by CCC.

Eligible non-U.S. goods. Goods, including local costs, that are not U.S. goods but for which a coverage waiver has been requested by the seller and approved by CCC.

Eligible interest. The amount of interest that CCC agrees to pay the holder of the payment guarantee in the event that CCC pays a claim for default of ordinary interest. Eligible interest shall be the lesser of:

(1) The amount calculated using the interest rate agreed by the holder of the payment guarantee and the foreign financial institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the payment guarantee.

Emerging market. Any country that CCC determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) has the potential to provide a viable and significant market for U.S. agricultural commodities or products.

Environmental and Social Impact Assessment (ESIA). A report that identifies the environmental and social risks and impacts of a project/transaction and proposed measures to avoid, minimize, mitigate and/or offset adverse environmental and social impacts. The report must address the items set out in the most recent Organisation for Economic Co-operation and Development's ''Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.''

Firm sales contract. The written sales contract entered into between the seller and the buyer which sets forth the terms and conditions of an eligible export sale from the seller to the buyer. Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The firm sales contract between the seller and the buyer may be conditioned upon CCC's approval of the seller's application for a payment guarantee. The written evidence of sale for the purposes of the FGP must, at a minimum, document the following information:

(1) Date of sale;

(2) A complete description of all goods associated with the transaction. For goods to be covered by the payment guarantee, include the brand name and model number, country where the good was manufactured and country from which the good will be exported (if applicable), quantity, value, and Incoterms (if applicable);

(3) A complete description of all services associated with the transaction. For services to be covered by the payment guarantee, include the supplier and cost;

(4) The date of performance of each contractual event; and

(5) Evidence of agreement between buyer and seller.

Foreign financial institution. A financial institution (including foreign branches of U.S. financial institutions):

(1) Organized and licensed under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction (except for multilateral and sovereign institutions).

Foreign financial institution letter of credit or letter of credit. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices (UCP) for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), and if electronic documents are to be utilized, the current revision of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP), providing for payment in U.S. dollars against stipulated documents and issued in favor of the seller by a CCC-approved foreign financial institution.

GSM. The General Sales Manager, Foreign Agricultural Service (FAS), USDA, acting in his or her capacity as Vice President, CCC, or designee.

Guaranteed value. The maximum amount indicated on the face of the payment guarantee, exclusive of interest, that CCC agrees to pay the holder of the payment guarantee. The guaranteed value is calculated by deducting the initial payment and any discounts and allowances from the net contract value and adding to that result the value of local costs that CCC has approved for coverage. The resulting figure is then multiplied by the guaranteed percentage (up to the maximum percentage allowable for that country).

Holder of the payment guarantee. The seller or the assignee of the payment guarantee with the legal right to make a claim and receive the payment of proceeds from CCC under the payment guarantee in case of default by the foreign financial institution.

Incoterms. Trade terms developed by the International Chamber of Commerce in Incoterms 2010 (or latest revision), which define the respective obligations of the buyer and the seller in a sales contract.

Initial payment. The minimum amount that the buyer is required to pay the seller prior to CCC's approval of the payment guarantee, expressed as a percentage (specified on the USDA Web site) of the net contract value.

Letter of interest. Information that the seller may provide to CCC prior to applying for a payment guarantee to obtain feedback on the potential eligibility of a transaction. Information to be submitted in a letter of interest is set out on the USDA Web site.

Local costs. Expenditures for goods in the destination country that are included in the firm sales contract.

Net contract value. The aggregate value of goods and cost of services (exclusive of local costs) that are eligible for guarantee coverage and for which coverage is requested.

North American Industry Classification System (NAICS). Standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Ordinary interest. Interest (other than post default interest) charged on the principal amount identified in the foreign financial institution letter of credit or, if applicable, the terms and conditions document.

Payment guarantee. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the seller, subject to the terms set forth in the written guarantee, this subpart, and any applicable program announcements, agrees to pay the holder of the payment guarantee in the event of a default by a foreign financial institution on its repayment obligation under the foreign financial institution letter of credit issued in connection with a guaranteed sale or, if applicable, under the terms and conditions document.

Post default interest. Interest charged on amounts in default that begins to accrue upon default of payment, as specified in the foreign financial institution letter of credit or, if applicable, in the terms and conditions document.

Preliminary environmental and social screening document or Screening document. A document in which the seller provides basic information about a transaction to allow CCC to determine whether the transaction may entail potentially adverse environmental and/or social impacts. The screening document is available on the USDA Web site.

Principal. A principal of a corporation or other legal entity is an individual serving as an officer, director, owner, partner, or other individual with management or supervisory responsibilities for such corporation or legal entity.

Program announcement. An announcement issued by CCC on the USDA Web site that provides information on policies, procedures, specific country programs and other information relevant to the operation of the FGP.

Repayment obligation. A contractual commitment by the foreign financial institution issuing the letter of credit in connection with an eligible export sale to make payment(s) on principal amount(s), plus any ordinary interest and post default interest, in U.S. dollars, to a seller or U.S. financial institution on deferred payment terms consistent with those permitted under CCC's payment guarantee. The repayment obligation must be documented using one of the methods specified in §1493.280.

Repurchase agreement. A written agreement under which the holder of the payment guarantee may from time to time enter into transactions in which the holder of the payment guarantee agrees to sell to another party foreign financial institution Letter(s) of Credit and, if applicable, terms and conditions document(s) secured by the payment guarantee, and repurchase the same foreign financial institution Letter(s) of Credit and terms and conditions documents secured by the payment guarantee, on demand or date certain at an agreed upon price.

SAM (System for Award Management). A Federal Government owned and operated free Web site that contains information on parties excluded from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and nonfinancial assistance and benefits.

Seller. A supplier of goods and/or services that is both qualified in accordance with the provisions of §1493.220 and the applicant for the payment guarantee.

Service. Any business activity classified in any of the 13 NAICS services sectors (NAICS chapters 22 and 48–49 through 81). For the shipment of goods, freight and insurance costs to the port of entry that are included in the price of the goods (in accordance with the specified Incoterms) are not considered services under this subpart.

Terms and conditions document. A document specifically identified and referred to in the foreign financial institution letter of credit which may contain the repayment obligation and the special requirements specified in §1493.280.

Total FGP transaction value. The aggregate value of goods and cost of services (including local costs) to be covered by the payment guarantee. It is the net contract value plus eligible local costs, less the initial payment and less any discounts and allowances.

United States or U.S. Each of the States of the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

U.S. agricultural commodity or U.S. agricultural commodities.

(1) (i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

U.S. content test. A determination of the total value of eligible non-U.S. goods and value of imported components as a percentage of the sum of the

net contract value and the value of approved local costs as specified in §1493.290(e).

USDA. United States Department of Agriculture.

U.S. financial institution. A financial institution (including branches of foreign financial institutions):

(1) Organized and licensed under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

U.S. goods. Goods that are assembled, processed or manufactured in, and exported from, the United States, including goods which contain imported raw materials or imported components. Minor or cosmetic procedures (*e.g.*, affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing.

U.S. person. One of the following:

(1) An individual who is a citizen or legal resident of the United States; or

(2) An entity constituted or organized in the United States, including any corporation, trust partnership, sole proprietorship, joint venture, or other association with business activities in the United States.

U.S. services. Services performed by U.S. persons, including those temporarily residing outside the United States. Costs for hotels, meals, transportation, and other similar services incurred in the destination country are not U.S. services.

Value of components (also value of U.S. components, value of imported components). The price derived for components in goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

Value of goods (also value of U.S. goods, value of non-U.S. goods, or value of Eligible non-U.S. goods). The price derived for goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

§1493.220 Information required for seller participation.

(a) *Qualification requirements*. Sellers must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, an applicant must submit the following information to CCC in the manner specified on the USDA Web site:

(1) For the applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the FGP sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) Email address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The form of business entity of the applicant, (*e.g.*, sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories or possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office (a post office box is not an acceptable address); and

(ii) Telephone and fax numbers.

(3) For the applicant's agent for the service of process:

(i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;

(ii) Telephone and fax numbers;

(iii) Email address (if applicable); and

(iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (*i.e.*, producer, service provider, trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history selling the goods or services to be sold under the FGP, including number of years involved in selling, types of goods or services sold, and destination of sales for the preceding three years;

(iii) Whether or not the applicant is a ''small or medium enterprise'' (SME) as defined on the USDA Web site.

(5) A listing of any related companies (*e.g.*, affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: ''All certifications set forth in 7 CFR 1493.250(a) are hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.250(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any seller that is currently qualified under subpart B of this part, §1493.30, need only provide the information requested in §1493.220(a)(4). Once CCC receives that information, CCC will notify the seller that the seller is qualified under this section to submit applications for an FGP payment guarantee, and the other information provided by the seller pursuant to §1493.30 will be deemed to also have been provided under this section. Any seller not submitting an application for a GSM–102 or FGP payment guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in §1493.220(a) to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the seller must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in §1493.220(a).

§1493.230 Information required for U.S. financial institution participation.

(a) *Qualification requirements.* U.S. financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, a U.S. financial institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year-end audited financial statements for the applicant's most recent fiscal year;

(5) Breakdown of the applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, affiliate, or branch of another financial institution);

(7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: ''All certifications set forth in 7 CFR 1493.250 are hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.250. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. financial institution that is qualified under subpart B, §1493.40 is qualified under this section, and the information provided by the U.S. financial institution pursuant to §1493.40 will be deemed to also have been provided under this section. Any U.S. financial institution participating in neither the GSM–102 nor FGP programs for two consecutive U.S. Government fiscal years must resubmit the information and certifications specified in paragraph (a) of this section to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the U.S. financial institution must promptly notify CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* A U.S. financial institution may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in §1493.230(a).

§ 1493.240 Information required for foreign financial institution participation.

(a) *Qualification requirements.* Foreign financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, a foreign financial institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Year-end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: ''All certifications set forth in 7 CFR 1493.250 are

hereby made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.250. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the foreign financial institution is eligible for participation in the FGP, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this foreign financial institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified foreign financial institution shall submit annually to CCC the certifications in §1493.250 and its audited fiscal year-end financial statements in accordance with the accounting standards established by the applicant's regulators, in English, so that CCC may determine the continued ability of the foreign financial institution to adequately service CCC guaranteed debt. If the foreign financial institution is not subject to a banking or other financial regulatory authority, it must submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the foreign financial institution's dollar participation limit. Any foreign financial institution participating in neither the FGP nor the GSM–102 Program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the foreign financial institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. Additionally, if at any time the information required by paragraph (a) of this section changes, the foreign financial institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(e) *Ineligibility for program participation.* A foreign financial institution:

(1) May be deemed ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in §1493.240(a); and

(2) Will be deemed ineligible to participate in the FGP if, based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the payment guarantees issued by CCC.

§1493.250 Certifications required for program participation.

(a) When making the statement required by §§1493.220(a)(7), 1493.230(a)(9), or 1493.240(a)(6), each seller, U.S. financial institution and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State,

or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.*, a corporation is not controlled by an officer, director, or shareholder who owes such a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.*, a corporation does not control a wholly-owned or partially-owned subsidiary which owes such a debt).

(b) *Additional certifications for U.S. and foreign financial institution applicants.* When making the statement required by §1493.230(a)(9) or §1493.240(a)(6), each U.S. and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and its principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and its U.S. principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001 and the Foreign Corrupt Practices Act of 1977.

[81 FR 65515, Sept. 22, 2016, as amended at 84 FR 28186, June 18, 2019]

§ 1493.260 Application for payment guarantee.

(a) *Letter of interest.* Prior to submitting an initial application for a payment guarantee in accordance with paragraph (b) of this section, the seller may, solely at the seller's option, submit a letter of interest to CCC describing a transaction for which FGP coverage may be sought. The letter of interest must contain all of the information specified on the USDA Web site and must be accompanied by a completed preliminary environmental and social screening document. A letter of interest fee, which will be specified on the USDA Web site, must accompany the letter of interest. CCC will review the letter of interest and provide preliminary feedback to the seller on whether the transaction may be eligible for coverage under the FGP. However, CCC's determination whether to issue a payment guarantee will be based on the seller's applications submitted pursuant to paragraphs (b) and (d) of this section.

(b) *Initial application for payment guarantee.* A firm sales contract must exist before a seller may submit an initial application for a payment guarantee. An initial application for a payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site, and be accompanied by the application fee in accordance with §1493.300(b). Each initial application for a payment guarantee must also include a completed Preliminary Environmental and Social Screening Document. If the seller previously submitted the screening document with a letter of interest, the seller is required to re-submit it with the initial application only if revisions are needed to the screening document. An initial application must identify the name and address of the seller and include the following information:

(1) Destination country.

(2) The name and address of the buyer. If the buyer is not physically located in the destination country, it must have a buyer's representative in

the destination country taking receipt of the goods and services covered by the payment guarantee. If applicable, provide the name and address of the buyer's representative.

(3) The name and address of the party on whose request the letter of credit is issued, if other than the buyer.

(4) The name and address of the end-user of the goods or services, if other than the buyer.

(5) The seller's sales number pertinent to the application and a copy of the firm sales contract.

(6) A description (including location, *i.e.,* address, city, port, and/or GPS coordinates, if available) of the agriculture-related facility that will use the goods and/or services to be covered by the payment guarantee and an explanation of how the goods and/or services will be used to improve handling, marketing, processing, storage, or distribution of U.S. agricultural commodities. If the payment guarantee covers goods not intended for a specific facility, describe where the goods will be delivered in the destination country.

(7) List of all agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed by the proposed transaction after completion, and an explanation of why and how the facility or goods and/or services will specifically benefit exporters of U.S. agricultural commodities.

(8) Total value of the firm sales contract.

(9) A full description of each good to be covered by the payment guarantee. The goods specified in the seller's application for the payment guarantee must correspond with the description of the goods specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

(i) Brand name and model number;

(ii) Applicable 10-digit Harmonized System classification code;

(iii) Description of the good;

(iv) Country where the good was manufactured and from which the good will be exported;

(v) For U.S. goods, the value of imported components used in the U.S. good's manufacture. If requesting guarantee coverage of only the U.S. components in U.S. goods, provide the value of U.S. components;

(vi) For goods that are local costs, the name of the local supplier;

(vii) Quantity;

(viii) Value of the good; and

(ix) Incoterms (if the sale of the goods is based on Incoterms delivery).

(10) A full description of each U.S. service to be covered by the payment guarantee. The U.S. services specified in the seller's application for the payment guarantee must correspond with the description of the U.S. services specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

(i) Description of the U.S. service;

(ii) Supplier of the U.S. service;

(iii) Cost of the U.S. service; and

(iv) NAICS classification number.

(11) A description and date of performance (or timeframe of performance if the exact date is unknown) of each contractual event, as specified in the firm sales contract.

(12) Indication of whether a coverage waiver is requested in accordance with §1493.290(f). If a coverage waiver is requested, the applicant must indicate the nature of the waiver requested per §1493.290(f)(1) and provide the justification and explanation required by §1493.290(f)(2).

(13) Name and location of the foreign financial institution issuing the letter of credit and, upon request by CCC, written evidence that the foreign financial institution has agreed to issue the letter of credit.

(14) The term length of the credit being extended and the intervals between principal payments for each contractual event under the payment guarantee.

(15) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing guarantees or financing to the seller or other competing sellers in connection with this sale, whether or not the goods or services are of U.S. origin or would otherwise qualify for a payment guarantee under this subpart. Copies of

any documents relating to such arrangements must be provided.

(16) A statement of how this transaction may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the destination country. Include in the statement the share of any private sector ownership in the transaction.

(17) An estimate of how many U.S. persons will be or have been hired because of the firm sales contract and/or how many U.S. persons are required to fulfill the firm sales contract.

(18) FGP tracking number assigned to previously submitted letter of interest, if applicable.

(c) *Review of initial application.* (1) An initial application may receive conditional approval from CCC as submitted, be conditionally approved with modifications agreed to by the seller, or be rejected by CCC. CCC's review will include, but not be limited to, the following criteria:

(i) CCC will only consider an initial application in connection with a transaction that CCC determines will benefit primarily exports of U.S. agricultural commodities.

(ii) If, based upon a price review the unit sales price of any good and/or service(s) does not fall within the prevailing commercial market level ranges, as determined by CCC, the initial application will not be approved as submitted.

(iii) CCC will review the preliminary environmental and social screening document submitted by the seller and, if necessary, request additional information from the seller to determine whether the transaction could have potentially significant adverse environmental and/or social impacts. If CCC determines that a transaction may have such significant adverse impacts, the seller must submit an Environmental and Social Impact Assessment (ESIA) with the final application for the payment guarantee. Alternatively, CCC may reject an initial application for payment guarantee based on the screening document and any additional information provided by the seller.

(2) Once CCC indicates its approval of the initial application to the seller, the seller must submit a final application as specified in paragraph (d) of this section before CCC will make a final determination of whether to issue a payment guarantee.

(d) *Final application for payment guarantee.* Once CCC approves an initial application, CCC must receive the seller's final application for a payment guarantee within the timeframe specified by CCC. This timeframe will be a minimum of 30 calendar days. The final application for payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site and be accompanied by the full guarantee fee (less any previous letter of interest or initial application fees paid toward the payment guarantee) and the environmental and social impact assessment, if required by CCC. The final application must identify the name and address of the seller and include the following information:

(1) FGP tracking number assigned by CCC.

(2) Destination country.

(3) The name and address of the buyer.

(4) A description of each good and U.S. service, along with the value of the Good and Cost of the service, for which guarantee coverage is requested, based on CCC's feedback on the seller's initial application. If the seller is seeking guarantee coverage on only the U.S. components used in the assembly of U.S. goods, provide the value of the U.S. Components.

(5) Net contract value.

(6) Amount of the initial payment and evidence that the initial payment has been paid by the buyer to the seller.

(7) Description and value of any discounts and allowances.

(8) Value of approved local costs.

(9) Total FGP transaction value.

(10) Guaranteed value.

(11) Guarantee fee.

(12) The seller's statement, ''All certifications set forth in §1493.270 are hereby being made by the seller in this application'' which, when included in the application by the seller, will constitute a certification that it is in compliance with all the requirements set forth in §1493.270 with respect to both the initial and final applications.

(e) *Public comment.* To provide the public opportunity to review and comment on the potential environmental and social impacts of a transaction, CCC will make available on its Web site a list of pending transactions for which an ESIA is required. Interested parties will have a minimum of 30 business days to request and provide input on an ESIA prior to CCC's final decision. CCC will not disclose any confidential business information associated with a transaction unless such disclosure is authorized by law.

(f) *Reporting.* The seller may be required to submit reports to CCC on a quarterly, biannual, or annual basis to allow CCC to monitor transactions in which there is a potential for negative environmental and/or social impact. Reporting frequency will be based on the extent of the transaction's impact and any mitigation required. CCC and the seller will agree upon any reporting requirements, including the elements of reporting and the frequency, prior to issuance of a payment guarantee.

(g) *Approval of final application.* A final application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the seller, or rejected by CCC. CCC shall have the right to request the seller to furnish any other information and documentation it deems pertinent to the evaluation of the seller's application. In the event that the final application is approved, the Director will cause a payment guarantee to be issued in favor of the seller. Such payment guarantee will become effective at the time specified in §1493.290(b).

§1493.270 Certification requirements for obtaining payment guarantee.

By providing the statement in §1493.260(d)(12), the seller is certifying that the information provided in the initial and final applications is true and correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to final applications that do not include this statement. If the seller makes false certifications with respect to a payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any goods not yet exported and services not yet performed and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting an application for a payment guarantee and providing the statement set forth in §1493.260(d)(12), certifies that:

(a) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(b) At the time of submission of the final application for payment guarantee, the buyer does not appear as an excluded party on the SAM list;

(c) The seller is fully in compliance with the requirements of §1493.320(b) for all existing payment guarantees issued to the seller or has requested and been granted an extension per §1493.320(b)(3); and

(d) The information provided pursuant to §1493.220 has not changed and the seller still meets all of the qualification requirements of §1493.220.

§1493.280 Special requirements of the foreign financial institution letter of credit and the terms and conditions document, if applicable.

(a) *Permitted mechanisms to document special requirements.* (1) A foreign financial institution letter of credit is required in connection with the sale to which CCC's payment guarantee pertains.

(i) If the obligation to pay by the foreign financial institution is conditioned on shipment documentation, the letter of credit must stipulate presentation of at least one original clean on board bill of lading as a required document, unless:

(A) The seller, or a related company previously reported to CCC by the seller pursuant to 1493.220(a)(5), is named as the shipper on the clean, on-board bill of lading. If the seller or a related company is named the shipper on the

bill of lading, the letter of credit may stipulate a copy or photocopy of an original, clean, on-board bill of lading; or

(B) The letter of credit stipulates presentation of electronic documents per paragraph (a)(1)(ii) of this section.

(ii) If the letter of credit will allow for presentation of electronic documents, the letter of credit must so stipulate.

(iii) If the obligation to pay by the foreign financial institution is conditioned on a contractual event requiring other than shipment documentation, the contractual event must be clearly stipulated in either the letter of credit or the terms and conditions document.

(2) The use of a terms and conditions document is optional. The terms and conditions document, if any, must be specifically identified and referred to in the foreign financial institution letter of credit.

(3) The special requirements in paragraph (b) of this section must be documented in one of the two following ways:

(i) The special requirements may be set forth in the foreign financial institution letter of credit as a special instruction from the foreign financial institution; or

(ii) The special requirements may be set forth in a separate terms and conditions document.

(b) *Special requirements.* The following provisions are required and must be documented in accordance with paragraph (a) of this section:

(1) The terms of the repayment obligation, including a specific promise by the foreign financial institution issuing the letter of credit to pay the repayment obligation;

(2) The following language: ''In the event that the Commodity Credit Corporation (''CCC'') is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.'';

(3) A provision permitting the holder of the payment guarantee to declare all or any part of the repayment obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the letter of credit or, if applicable, the terms and conditions document; and

(4) Post default interest terms.

§ 1493.290 Terms and requirements of the payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the holder of the payment guarantee an amount not to exceed the guaranteed value, plus Eligible interest, in the event that the foreign financial institution fails to pay under the foreign financial institution letter of credit and, if applicable, the terms and conditions document. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee becomes effective on the Date(s) of Performance. For goods, the period of coverage will apply from the date on which interest begins to accrue, if earlier than the date of performance. The payment guarantee will apply to the period beginning with the Date(s) of Performance and will continue during the credit term specified in the payment guarantee or amendments thereto.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any program announcements and notices to participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date of performance.* The final allowable date of performance will be specified on the payment guarantee.

(e) *U.S. content test.* (1) Except as allowed under § 1493.290(f), CCC will issue a payment guarantee only if the following items collectively represent less than 50 percent of the sum of the net contract value and the value of approved local costs:

(i) The value of eligible non-U.S. goods; and

(ii) The value of imported components.

(2) Imported raw materials and basic manufactured items (such as iron, steel, nuts, bolts, etc.) which are processed, assembled or manufactured in the United States are automatically included in CCC's coverage and are not counted as imported components for the purpose of determining U.S. content.

(f) *Coverage waiver*. (1) The seller may request a coverage waiver for any of the following:

(i) To allow for guarantee coverage of non-U.S. goods; and/or

(ii) The U.S. content test, allowing for guarantee coverage of non-U.S. goods and imported components in U.S. goods in excess of the value permitted under the U.S. content test.

(2) To request a coverage waiver on one of the bases specified in paragraph (f)(1) of this section, the seller must submit with the initial application for a payment guarantee a justification of why the non-U.S. goods and/or imported components in U.S. goods are essential to the completion of the FGP transaction. This justification must be based on one of the following:

(i) The goods and/or components are no longer manufactured in or provided by the United States;

(ii) The use of U.S. goods and/or components is not cost effective; or

(iii) U.S. goods and/or components are not compatible with the existing infrastructure in the destination country.

(3) In determining whether to grant a coverage waiver, CCC will consider the following factors:

(i) Whether information obtained by CCC from industry sources, government agencies, or any other sources supports the justification provided by the seller;

(ii) Whether the non-U.S. goods (and/or imported components in U.S. goods) are essential to the completion of the transaction; and

(iii) Any other information CCC determines is relevant.

(g) *Certain transactions are ineligible for payment guarantees*. A transaction (or any portion thereof) is ineligible for payment guarantee coverage if at any time CCC determines that:

(1) The sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the transaction;

(2) The sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(3) The buyer is excluded or disqualified from participation in U.S. government programs;

(4) The goods, services, and/or facility being financed will not primarily benefit U.S. agricultural commodity exports;

(5) The sale is not an eligible export sale.

(h) *Certain contractual events are ineligible for payment guarantee coverage*. The following contractual events are ineligible for coverage under an FGP payment guarantee, except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such contractual events:

(1) Contractual events with a date of performance prior to the date of receipt by CCC of the seller's written initial application for a payment guarantee;

(2) Contractual events with a date of performance later than the final date of performance shown on the payment guarantee or any amendments thereof;

(3) Contractual events where the date of issuance of a foreign financial institution letter of credit is later than the date of performance; or

(4) Contractual events that have been guaranteed by CCC under another payment guarantee. If CCC determines that the contractual event has been guaranteed under multiple payment guarantees (or coverage has been requested under multiple payment guarantees), CCC will determine which payment guarantee (or application for payment guarantee), if any, corresponds to an eligible export sale.

(i) *Additional requirements*. The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the Director. Such additional terms,

conditions or qualifications as stated in the payment guarantee are binding on the seller and the assignee.

(j) *Amendments to the firm sales contract.* Any amendments to the firm sales contract that impact contractual event(s) covered by the payment guarantee must be submitted to CCC for approval for coverage prior to the date of performance of the contractual event.

(k) *Amendments to the payment guarantee.* A request for an amendment of a payment guarantee may be submitted only by the seller, with the written concurrence of the assignee, if any, and must be accompanied by the revised firm sales contract, if applicable. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable program announcements and sufficient budget authority exists. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the seller to justify the request and to charge a fee for amendments. Such fees will be announced and available on the USDA Web site. Any request to amend the foreign financial institution on the payment guarantee will require that the holder of the payment guarantee resubmit to CCC the certification in §1493.310(c)(1)(i) or §1493.330(d).

§1493.300 Fees.

(a) *Letter of interest fee.* A letter of interest fee, as specified on the USDA Web site, must be received by CCC before CCC will consider the seller's letter of interest.

(b) *Initial application fee.* An initial application fee, as specified on the USDA Web site, must be received by CCC before CCC will consider the seller's initial application for a payment guarantee.

(c) *Guarantee fee rates.* Guarantee fee rates will be based upon the length of the payment terms provided for in the firm sales contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors that CCC determines appropriate for consideration.

(d) *Calculation of guarantee fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(e) *Payment of guarantee fee.* The seller shall remit, with his final application, the full amount of the guarantee fee, less the previously paid letter of interest fee, if applicable, and the initial application fee. CCC will not issue a payment guarantee until the full amount of the guarantee fee has been received by CCC. The seller's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the USDA Web site.

(f) *Refunds of fees.* Letter of interest fees, initial application fees, and guarantee fees will ordinarily not be refundable unless the Director determines that such refund will be in the best interest of CCC.

§1493.310 Assignment of the payment guarantee.

(a) *Requirements for assignment.* The seller may assign the payment guarantee only to a U.S. financial institution approved for participation by CCC. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and, unless approved in advance by CCC, may not be:

(1) Made to one party acting for two or more parties; or

(2) Subject to further assignment.

(b) *CCC to receive notice of assignment of payment guarantee.* A notice of assignment signed by the parties thereto must be filed with CCC by the assignee in the manner specified on the USDA Web site. The name and address of the assignee must be included on the written notice of assignment. The notice of assignment should be received by CCC within 30 calendar days of the date of assignment.

(c) *Required certifications.* (1) The U.S. financial institution must include the following certifications on the notice of assignment: ''I certify, that:

(i) [Name of Assignee] has verified that the foreign financial institution, at the time of submission of the notice of assignment, does not appear as an excluded party on the SAM list; and

(ii) To the best of my knowledge and belief, the information provided pursuant to §1493.230 has not changed and [name of Assignee] still meets all of the qualification requirements of §1493.230.''

(2) If the assignee makes a false certification with respect to a payment guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the payment guarantee, reject the assignment of the payment guarantee, and/or commence legal action and/or administrative proceedings against the assignee.

(d) *Notice of ineligibility to receive assignment.* In cases where a U.S. financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. financial institution and to the seller issued the payment guarantee.

(e) *Ineligibility of U.S. financial institutions to receive an assignment and proceeds.* A U.S. financial institution will be ineligible to receive an assignment of a payment guarantee or the proceeds payable under a payment guarantee if such U.S. financial institution:

(1) At the time of assignment of a payment guarantee, is not in compliance with all requirements of §1493.230(a); or

(2) Is the branch, agency, or subsidiary of the foreign financial institution issuing the letter of credit; or

(3) Is owned or controlled by an entity that owns or controls the foreign financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign financial institution issuing the foreign financial institution letter of credit; or

(5) Is owned or controlled by the government of a foreign country and the payment guarantee has been issued in connection with sales of goods or services to buyers located in such foreign country.

(f) *Repurchase agreements.* (1) The holder of the payment guarantee may enter into a repurchase agreement, to which the following requirements apply:

(i) Any repurchase under a repurchase agreement by the holder of the payment guarantee must be for the entirety of outstanding balance under the associated repayment obligation;

(ii) In the event of default with respect to the repayment obligation subject to a repurchase agreement, the holder of the payment guarantee must immediately effect such repurchase; and

(iii) The holder of the payment guarantee must file all documentation required by §§1493.350 and 1493.360 in case of a default by the foreign financial institution under the payment guarantee.

(2) The holder of the payment guarantee shall, within five business days of execution of a transaction under the repurchase agreement, notify CCC of the transaction in writing in the manner specified on the USDA Web site. Such notification must include the following information:

(i) Name and address of the other party to the repurchase agreement;

(ii) A statement indicating whether the transaction executed under the repurchase agreement is for a fixed term or if it is terminable upon demand by either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: ''[Name of holder of the payment guarantee] has entered into a repurchase agreement that meets the provisions of 7 CFR 1493.310(f)(1) and, prior to entering into this agreement, verified that [name of other party to the repurchase agreement] does not appear as an excluded party on the SAM list.''

(3) Failure of the holder of the payment guarantee to comply with any of the provisions of §1493.310(f) may result in CCC annulling coverage on the foreign financial institution letter of credit and Terms and Condition Document, if applicable, covered by the payment guarantee.

§1493.320 Evidence of performance.

(a) *Report of performance.* The seller is required to provide CCC an evidence of performance report for each contractual event occurring under the payment guarantee. This report must include the following information:

(1) Payment guarantee number;
(2) Evidence of performance report number (*e.g.*, Report 1, Report 2) reflecting the report's chronological order of submission under the particular payment guarantee;
(3) Date of performance;
(4) Seller's firm sales contract number;
(5) Detailed description of the contractual event. For goods, include the applicable 10-digit Harmonized System classification code and the quantity;
(6) Net contract value of the contractual event covered by the payment guarantee;
(7) Amount of initial payment corresponding to the contractual event;
(8) Description and value of discounts and allowances, if any;
(9) Value of approved local costs corresponding to the contractual event, if any;
(10) Total FGP transaction value;
(11) Guaranteed value of contractual event;
(12) The seller's statement, ''All certifications set forth in §1493.330 are hereby made by the seller in this evidence of performance'' which, when included in the evidence of performance by the seller, will constitute a certification that it is in compliance with all the requirements set forth in §1493.330; and
(13) In addition to all of the above information, the final evidence of performance report for the payment guarantee must include the following:
(i) The statement ''All contractual events under the payment guarantee have been completed.''
(ii) A statement summarizing the total value of all contractual events covered under the payment guarantee (*i.e.*, the cumulative totals on all numbered reports).

(b) *Time limit for submission of evidence of performance.* (1) The seller must provide a written report to CCC in the manner specified on the USDA Web site within 30 calendar days from the date of performance.
(2) If at any time the seller determines that no contractual events are to occur under a payment guarantee, the seller is required to notify CCC in writing no later than the final date of performance specified on the payment guarantee by furnishing the payment guarantee number and stating ''No contractual events will occur under the payment guarantee.''
(3) Requests for an extension of the time limit for submitting an evidence of performance report must be submitted in writing by the seller to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted if such extension is requested prior to the expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for payment guarantees from a seller under §1493.260 until the seller is fully in compliance with the requirements of §1493.320(b) for all existing payment guarantees issued to that seller or has requested and been granted an extension in accordance with §1493.320(b)(3).

§ 1493.330 Certification requirements for the evidence of performance.

By providing the statement contained in §1493.320(a)(12), the seller is certifying that the information provided in the evidence of performance report is true and correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the seller makes false certifications with respect to a payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any contractual events that have not yet occurred and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting the evidence of performance and providing the statement set forth in §1493.320(a)(12), certifies that:
(a) The specifications and/or quantity of the contractual event conform with the information contained in the seller's application for payment guarantee and firm sales contract, or if different, CCC has approved such changes;

(b) A foreign financial institution letter of credit has been opened in favor of the seller by the foreign financial institution shown on the payment guarantee to cover the dollar amount of the contractual event covered by the payment guarantee, less the initial payment and less discounts and allowances;

(c) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(d) If the seller has not assigned the payment guarantee to a U.S. financial institution, the seller has verified that the foreign financial institution, at the time of submission of the evidence of performance report, does not appear as an excluded party on the SAM list; and

(e) The information provided pursuant to §§1493.220 and 1493.260 has not changed (except as agreed to and amended by CCC) and the seller still meets all of the qualification requirements of §1493.220.

§1493.340 Proof of entry.

(a) *Diversion.* The diversion of goods covered by an FGP payment guarantee to a destination country other than that shown on the payment guarantee is prohibited, unless expressly authorized in writing by the Director.

(b) *Records of proof of entry.* (1) Sellers must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the goods sold in connection with the FGP in the destination country. At the Director's request, the seller must submit to CCC records demonstrating proof of entry. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the destination country, by an agent or representative of the vessel or shipline that delivered the goods to the destination country, or by a private surveyor in the destination country, or other documentation deemed acceptable by the Director showing:

(i) That the good(s) entered the destination country;

(ii) The identification of the export carrier;

(iii) The quantity of the good(s);

(iv) A description of the good(s); and

(v) The date(s) and place(s) of unloading of the good(s) in the destination country.

(2) Where shipping documents (*e.g.*, bills of lading) clearly demonstrate that the goods were shipped to the destination country, proof of entry verification may be provided by the buyer.

§1493.350 Notice of default.

(a) *Notice of default.* If the foreign financial institution issuing the letter of credit fails to make payment pursuant to the terms of the letter of credit or the terms and conditions document, the holder of the payment guarantee must submit a notice of default to CCC as soon as possible, but not later than 5 business days after the date that payment was due from the foreign financial institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the USDA Web site and must include the following information:

(1) Payment guarantee number;

(2) Name of the destination country as shown on the payment guarantee;

(3) Name of the defaulting foreign financial institution;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;

(6) Date of foreign financial institution's refusal to pay, if applicable;

(7) Reason for foreign financial institution's refusal to pay, if known, and copies of any correspondence with the foreign financial institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the holder of the payment

guarantee fails to notify CCC of a default within 5 business days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing payment guarantees.*

(1) In the event that a foreign financial institution defaults under a repayment obligation under this subpart or under 7 CFR 1493, subpart B, CCC may declare that such foreign financial institution is no longer eligible to provide additional Letters of Credit under the FGP. If CCC determines that such defaulting foreign financial institution is no longer eligible for the FGP, CCC shall provide written notice of such ineligibility to all sellers and assignees, if any, having payment guarantees covering transactions with respect to which the defaulting foreign financial institution is expected to issue a letter of credit. Receipt of written notice from CCC that a defaulting foreign financial institution is no longer eligible to provide additional Letters of Credit under the FGP shall constitute withdrawal of coverage of that foreign financial institution under all payment guarantees with respect to any letter of credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting foreign financial institution under any payment guarantee with respect to any letter of credit issued before the date of receipt of such written notice.

(2) If CCC withdraws coverage of the defaulting foreign financial institution, CCC will permit the seller (with concurrence of the assignee, if any) to utilize another approved foreign financial institution, and will consider other requested amendments to the payment guarantee, for the balance of the transaction covered by the payment guarantee. If no alternate foreign financial institution is identified to issue the letter of credit within 30 calendar days, CCC will cancel the payment guarantee and refund the seller's guarantee fees corresponding to any unutilized portion of the payment guarantee.

§ 1493.360 Claims for default.

(a) *Filing a claim.* A claim by the holder of the payment guarantee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the USDA Web site. The claim must include the following documents and information:

(1) An original cover letter signed by the holder of the payment guarantee and containing the following information:

(i) Payment guarantee number;

(ii) A description of:

(A) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the seller or the assignee prior to submission of the claim; and

(B) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(iii) The following certifications:

(A) A certification that the defaulted payment has not been received (or, alternatively, specifying the portion of the scheduled payment that has not been received), listing separately scheduled principal and ordinary interest;

(B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and ordinary interest;

(C) A certification that all documents submitted under paragraph (a)(3) of this section are true and correct copies; and

(D) A certification that all documents conforming with the requirements for payment under the foreign financial institution letter of credit have been submitted to the negotiating bank or directly to the foreign financial institution under such letter of credit.

(2) An original instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the holder of the payment guarantee to the amount of payment in default under the applicable sale. The instrument must reference the applicable foreign financial institution letter of credit and, if applicable, the terms and conditions document; and

(3) A copy of each of the following documents:

(i) The repayment schedule with due dates, principal amounts and ordinary interest rates for each installment (if the ordinary interest rates for future payments are unknown at the time of the claim for default is submitted, provide estimates of such rates);

(ii) (A) The foreign financial institution letter of credit securing the sale; and

(B) If applicable, the terms and conditions document;

(iii) For goods, depending upon the method of shipment, the ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the destination country. If the transaction utilizes electronic bill(s) of lading (e-BL), a print-out of the e-BL from electronic system with an electronic signature is acceptable;

(iv) The seller's invoice. For shipment of goods, the invoice must show the applicable Incoterms;

(v) The evidence of performance report(s) previously submitted by the seller to CCC in conformity with the requirements of § 1493.320(a); and

(vi) If the defaulted payment was part of a transaction executed under a repurchase agreement, written evidence that the repurchase occurred as required under § 1493.310(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the holder of the payment guarantee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the holder of the payment guarantee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign financial institution to make scheduled installments on the same contractual event, the holder of the payment guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i), (a)(1)(ii), and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as per paragraph (a)(2) of this section, and the date the original claim was filed with CCC.

(d) *Alternative satisfaction of payment guarantees.* CCC may establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

§ 1493.370 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.360, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable payment guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the letter of credit and, if applicable, the terms and conditions document. If CCC determines that it is liable to the holder of the payment guarantee, CCC will pay the holder of the payment guarantee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any payment guarantee, not including any CCC late interest Payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus Eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the seller or the assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the seller or the assignee); or

(2) The guaranteed percentage (as indicated in the payment guarantee) of

the value of the contractual event indicated in the evidence of performance, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the seller or the assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the seller or the assignee).

(c) *CCC late interest.* If CCC does not pay a claim within 15 business days of receiving the claim in good order, CCC late interest will accrue in favor of the holder of the payment guarantee beginning with the sixteenth business day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC late interest will be paid on the guaranteed amount, as determined by paragraph (b) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC late interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due as a result of the claimant invoking an accelerated payment clause in the firm sales contract, the foreign financial institution letter of credit, the terms and conditions document (if applicable), or any obligation owed by the foreign financial institution to the holder of the payment guarantee that is related to the letter of credit issued in favor of the seller, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare up to the entire amount of the unpaid balance, plus accrued ordinary interest, in default, require the holder of the payment guarantee to invoke the acceleration provision in the foreign financial institution letter of credit or, if applicable, in the terms and conditions document, require submission of all claims documents specified in § 1493.360, and make payment to the holder of the payment guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* If an assignee submits a claim for default pursuant to § 1493.360 and all documents submitted appear on their face to conform with the requirements of such section, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the seller of which the assignee has no knowledge.

§ 1493.380 Recovery of defaulted payments.

(a) *Notification.* Upon claim payment to the holder of the payment guarantee, CCC will notify the foreign financial institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the seller or the assignee from or on behalf of the defaulting party, the buyer, or any source whatsoever (excluding payments between CCC, the seller and the assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid by the seller and/or assignee to CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the seller or the assignee, such party will also owe to CCC interest from the date of recovery of such funds to the date of CCC's receipt of such funds. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the seller or the assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share if any, provided that the required information necessary for determining pro rata distribution has been furnished. If a required payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery, and interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the holder of the payment guarantee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default on the date the claim is paid by CCC. Once CCC has paid out a particular claim under a payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the payment guarantee until both CCC and the holder of the payment guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, under the following circumstances the seller or the assignee will be liable to CCC for any amounts paid by CCC under the payment guarantee:

(1) The seller will be liable to CCC when and if it is determined by CCC that the seller has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the seller for the purpose of obtaining the payment guarantee or for fulfilling obligations under the FGP; and

(2) The assignee will be liable to CCC when and if it is determined by CCC that the assignee has engaged in fraud or otherwise violated program requirements.

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the holder of the payment guarantee, the holder of the payment guarantee and the seller will cooperate with CCC to affect recoveries from the foreign financial institution and/or the buyer. Cooperation may include, but is not limited to, submission of documents to the foreign financial institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in §1493.370(d); and other actions that do not increase the obligation of the holder of the payment guarantee or the seller under the payment guarantee.

§ 1493.385 Additional obligations and requirements.

(a) *Maintenance of records and access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a payment guarantee, the seller and the assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for goods and services sold in connection with a payment guarantee, including those records generated and maintained by agents and related companies involved in special arrangements with the seller. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the seller and the assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the seller's, assignee's, agent's, or related company's books,

records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the seller and the assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the seller in connection with the payment guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all sellers and U.S. and foreign financial institutions to review, and fully acquaint themselves with, all regulations, program announcements, and notices to participants relating to the FGP, as applicable. All sellers and U.S. and foreign financial institutions participating in the FGP are hereby on notice that they will be bound by this subpart and any terms contained in the payment guarantee and in applicable program announcements.

(c) *Submission of documents by principals.* All required submissions, including certifications, applications, reports, or requests (*i.e.*, requests for amendments), by sellers, assignees, or foreign financial institutions under this subpart must be signed by a principal of the seller, assignee, or foreign financial institution or their authorized designee(s). In cases where the designee is acting on behalf of the principal, the signature must be accompanied by wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority, and the name and title of the authorized person or officer. Further, the seller, assignee, or foreign financial institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by seller may lead to rescission of payment guarantee.* CCC may cancel a payment guarantee in the event that a seller makes a willful misstatement in the certifications in §§1493.270(a) and 1493.330(c) or if the seller fails to comply with the provisions of §1493.340 or §1493.385(a). However, notwithstanding the foregoing, CCC will not cancel its payment guarantee if it determines, in its sole discretion, that an assignee had no knowledge of the seller's misstatement or noncompliance at the time of assignment of the payment guarantee.

§ 1493.390 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the seller or the assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the FGP, this subpart, the applicable program announcements and notices to participants, or the payment guarantee.

(2) The seller or the assignee may seek reconsideration of a determination made by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the seller or the assignee of the determination. The seller or the assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary evidence submitted by the seller or the assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the seller or the assignee fails to request reconsideration of a determination by the Director within 30 calendar days of the date of the determination, then the determination of the Director will be deemed final.

(3) If the seller or the assignee requests reconsideration of a determination by the Director pursuant to subparagraph (a)(2) of this section, and the

Director upholds the original determination, then the seller or the assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the seller or the assignee fails to appeal the Director's final determination within 30 calendar days, as provided in §1493.390(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) A seller or assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal a final determination of the Director to the GSM. An appeal to the GSM must be made in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the seller or the assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the seller or the assignee does not request an administrative hearing, the seller or the assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the seller or the assignee to the GSM.

(3) If the seller or the assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the seller or the assignee. This date will ordinarily be within 60 calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The seller or the assignee and/or its counsel may present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the seller or the assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

(4) The decision of the GSM will be the final determination of CCC. The seller or the assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the seller or the assignee has violated the terms of this subpart or the payment guarantee by failing to comply with a determination made under this section, and the seller or the assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to exercise any remedies available to CCC under applicable law.

(d) *Seller's obligation to perform.* The seller will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the payment guarantee pending the conclusion of all procedures under this section.

§1493.395 Miscellaneous provisions.

(a) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(b) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0551–0032.

Subpart D—CCC Supplier Credit Guarantee Program Operations

SOURCE: 61 FR 33831, July 1, 1996, unless otherwise noted.

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), ''Contacts P/R'').

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of

promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified ''undesignated'' or ''unallocated'' dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the ''unallocated'' or ''undesignated'' portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an ''unallocated'' or ''undesignated'' dollar amount will contain further information on the ''unallocated'' or ''undesignated'' portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a

claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.420.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation.* A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) *Incoterms.* The following customary terms, as defined by the International Chamber of Commerce, Incoterms© current revision):

(1) Free Alongside Ship (FAS);

(2) Free on Board (FOB);

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and

(4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser.* A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest.* Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent

with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee.* An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP.* The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity.* (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(y) *USDA.* United States Department of Agriculture.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether

the applicant is eligible for participation in the program.

(a) *Submission of documentation.* In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: ''I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. [''Principals,'' for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC.''

(b) *Previous qualification.* Any exporter that is qualified under subpart B, §1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to §1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by §1493.430(a)(17) incorporating the certifications of §1493.440, including the certification in §1493.440(e) that the information previously provided pursuant to §1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;

(2) Name and address of the importer;

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;

(4) Date of sale;

(5) Exporter's sale number;

(6) Delivery period as agreed between the exporter and the importer;

(7) A full description of the commodity (including packaging, if any);

(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;

(10) Description and value of discounts and allowances, if any;

(11) Port value (includes upward loading tolerance, if any);

(12) Guaranteed value;

(13) Guarantee fee;

(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, ''ALL SECTION 1493.440 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION'' which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.440.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in §1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) Ineligible exporter. An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§1493.440 Certification requirements for payment guarantee.

By providing the statement in §1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in §1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.410(x).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction

complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to §1493.420 has not changed, the exporter still meets all of the qualification requirements of §1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§1493.450 Payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation. unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (*i.e.*, lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date

of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in §1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§1493.470 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number;

(2) Date of export;

(3) Exporter's sale number;

(4) Exported value;

(5) Quantity;

(6) A full description of the commodity exported;

(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;

(8) Description and value of discounts and allowances, if any;

(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale

was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, ''ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT'' which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.480.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§1493.480 Certification requirements for the evidence of export.

By providing the statement contained in §1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in §1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.410(x).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in §1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to §1493.420 has not changed, the exporter still meets all of the qualification requirements of §1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§1493.490 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry*. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in §1493.500(b)(4)(ii).)

§ 1493.500 Notice of default and claims for loss.

(a) *Notice of default*. If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting importer;

(4) Due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of importer's refusal to pay, if applicable; and

(7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss*. A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i) The importer obligation;

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the on-board ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

(iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to

the intervening purchaser and the intervening purchaser's invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to §1493.470(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§1493.510 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under §1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to §1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under §1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§1493.470

and 1493.480, excluding post-export adjustments (*i.e.*, corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in §1493.500.

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to §1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter

or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

APPENDIX A TO § 1493.520—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a $200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of $100,000 and an interest payment of $2,500.00 (10% per annum for 90 days on $100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due ($60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding ($1,183.56) (8% per annum for 90 days on $60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% $100,000)	$60,000.00
(b) Interest coverage—(8% per annum for 90 days on $60,000, basis 365 days)	1,183.56
.....	$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on $61,183.56, basis 365 days)	129.07
(d) Amount paid by CCC on February 22	$61,312.63
2. Importer's obligation under the importer obligation:	
(a) Principal due January 31	$100,000.00
Interest due January 31 (10% per annum for 90 days on $100,000, basis 360 days)	2,500.00
Amount owed by importer as of January 31	$102,500.00
(b) Penalty interest due (12% per annum for 22 days on $102,500.00, basis 360 days)	751.67
(c) Amount owed by importer as of February 22	$103,251.67
3. Amount of importer's obligation not covered by CCC's payment guarantee: $41,939.04 ($103,251.67–$61,312.63)..	

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is $103,251.67, CCC would be entitled to 59.38 percent ($61,312.63 divided by $103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent ($41,939.04 divided by $103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party,

and may not, unless approved in advance by CCC, be:

(i) Made to one party acting for two or more parties; or

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain

directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by §1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (*i.e.*, requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0037.

PARTS 1494–1495 [RESERVED]

PART 1499—FOOD FOR PROGRESS PROGRAM

Sec.

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AUTHORITY: 7 U.S.C. 1736o; and 15 U.S.C. 714b and 714c.

SOURCE: 81 FR 62605, Sept. 12, 2016, unless otherwise noted.

§ 1499.1 Purpose and applicability.

(a) This part sets forth the general terms and conditions governing the award of donated commodities and funds by the Commodity Credit Corporation (CCC) to recipients under the Food for Progress (FFPr) Program. Under the FFPr Program, recipients use the donated commodities, proceeds from any sale of such commodities, CCC-provided funds, and program income to implement a project in a foreign country pursuant to an agreement with CCC. The Foreign Agricultural Service (FAS) of the United States Department of Agriculture (USDA) administers the FFPr Program on behalf of CCC.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, USDA adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the FFPr Program, except as provided in paragraphs (e), (f) and (g) of this section.

(c) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the FFPr Program, to the extent that such regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC apply to the FFPr Program.

(d) In accordance with 7 U.S.C. 1736o(b)(5), assistance under the FFPr Program may be provided to governments of emerging agricultural countries, intergovernmental organizations, private voluntary organizations, nonprofit agricultural organizations or cooperatives, nongovernmental organizations, colleges or universities, and any other private entities.

(e) The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by CCC under the FFPr Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.1, and, therefore, they do not apply to a foreign government or an intergovernmental organization.

(f)(1) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all awards by CCC under the FFPr Program to all recipients that are private voluntary organizations, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.1; nonprofit agricultural organizations or cooperatives, including a nonprofit agricultural organization or cooperative that is a foreign organization; nongovernmental organizations, including a nongovernmental organization that is a for-profit entity or a foreign organization; colleges or universities; or other private entities, including a private entity that is a for-profit entity or a foreign organization.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all subawards to all subrecipients under this part, except in cases:

(i) Where the subrecipient is a foreign public entity; or

(ii) Where CCC determines that the application of these provisions to a subaward to a subrecipient that is a foreign organization would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

(g)(1) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies only to awards by CCC to recipients that are private voluntary organizations, agricultural organizations or cooperatives, nongovernmental organizations, colleges or universities, or other private entities, but that are not for-profit entities or foreign organizations.

(2) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to

subawards to subrecipients under this part, except where the subrecipient is a for-profit entity, foreign public entity, or foreign organization.

(3) Audit requirements for recipients and subrecipients that are for-profit entities or foreign organizations are set forth in § 1499.18.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45058, Aug. 28, 2019; 87 FR 53365, Aug. 31, 2022]

§ 1499.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or part 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between CCC and a recipient to implement a project under the FFPr Program.

CCC means the Commodity Credit Corporation, an agency and instrumentality of the United States within USDA, and includes any official of the United States delegated the responsibility to act on behalf of CCC.

CCC-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses authorized in the agreement, such as expenses for the internal transportation, storage and handling of the donated commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and technical assistance related to the monetization of the donated commodities.

College or *university* means an educational institution in any State which admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; is legally authorized within such State to provide a program of education beyond secondary education; provides an educational program for which a bachelor's degree or any other higher degree is awarded; is a public or other nonprofit institution; and is accredited by a nationally recognized accrediting agency or association. The terms include a research foundation maintained by such a college or university. As used in this definition, State will have the meaning given in 7 U.S.C. 3103(16).

Commodities means agricultural commodities, or products of agricultural commodities, that are produced in the United States.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out a project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Disburse means to make a payment to liquidate an obligation.

Donated commodities means the commodities donated by CCC to a recipient under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FFPr Program means the Food for Progress Program.

Nongovernmental organization means an organization that works at the local level to solve development problems in a foreign country in which the organization is located, except that the term does not include an organization that is primarily an agency or instrumentality of the government of the foreign country.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is

exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Program income means interest earned on proceeds from the sale of donated commodities, as well as funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include any of the following: proceeds from the sale of donated commodities; CCC-provided funds; interest earned on CCC-provided funds; funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts; or interest earned on funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts.

Project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement.

Recipient means an entity that enters into an agreement with CCC and receives donated commodities and CCC-provided funds to carry out activities under the agreement. The term recipient does not include a subrecipient.

Sale proceeds means funds received by a recipient from the sale of donated commodities.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the foreign country in which activities are implemented under an agreement.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant or recipient, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019; 87 FR 53365, Aug. 31, 2022]

§ 1499.3 Eligibility and conflicts of interest.

(a) A private voluntary organization, a nonprofit agricultural organization or cooperative, a nongovernmental organization, a college or university, or any other private entity is eligible to submit an application under this part to become a recipient under the Food for Progress Program. CCC will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government website for grant opportunities.

(b) Applicants, recipients, and subrecipients must comply with policies established by CCC pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019; 87 FR 53365, Aug. 31, 2022]

§ 1499.4 Application process.

(a) An applicant seeking to enter into an agreement with CCC must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the FFPr Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section as well as any other items required by the notice of funding opportunity and must be submitted electronically to CCC at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction and a strategic analysis, which includes a description of opportunities for lasting impact and sustainable benefits, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a detailed budget narrative that indicate:

(i) The amounts of any sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Inland and internal transportation, storage and handling (ITSH) costs; and

(C) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the FFPr Program-level results framework, as set forth in the notice of funding opportunity;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, midterm evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Unless an exception in 2 CFR 25.110 applies, each applicant is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Maintain an active SAM registration, in accordance with 2 CFR part 25, with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53365, Aug. 31, 2022]

§ 1499.5 Agreements.

(a) After CCC approves an application by an applicant, CCC will negotiate an agreement with the applicant. The agreement will set forth the obligations of CCC and the recipient.

(b) The agreement will include the general information required in 2 CFR 200.211(b), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.211(c), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b) and (c) of this section, the agreement will also include the following:

(1) The kind, quantity, and use of the donated commodities and an estimated commodity call forward schedule, with the month and year indicated for each expected commodity shipment;

(2) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The methods and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-CCC sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting

a subrecipient that has not yet been identified;

(vii) Any other governmental or non-governmental entities that will be involved in the implementation of the activities; and

(viii) Any processing, packaging, or repackaging of the donated commodities that will take place prior to their distribution, sale, or barter by the recipient;

(3) A budget, which will set forth the maximum amounts of sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item, as well as other applicable budget requirements;

(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities; indicators, targets, and baseline data; and information about how performance will be assessed, including the timing and scope of expected performance; and

(5) Any additional provisions specified by CCC during the negotiation of the agreement.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following, as applicable:

(1) The agreement will prohibit the sale or transshipment of the donated commodities by the recipient to a country not specified in the agreement, or the use of the donated commodities for other than domestic purposes, for as long as the recipient has title to such donated commodities;

(2) The recipient will assert that it has taken action to ensure that any donated commodities that will be distributed to beneficiaries will be imported and distributed free from all customs, duties, tolls, and taxes. The recipient must submit information to CCC to support this assertion;

(3) The recipient will assert that, to the best of its knowledge, the importation and distribution of the donated commodities in the target country will not result in a substantial disincentive to or interference with domestic production or marketing in that country. The recipient must submit information to CCC to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, any sale or barter of the donated commodities will not displace or interfere with any sales of United States commodities that would otherwise be made to or within the target country. The recipient must submit information to CCC to support this assertion; and

(5) The recipient will assert that adequate transportation and storage facilities will be available in the target country at the time of the arrival of the donated commodities to prevent spoilage or waste of the donated commodities. The recipient must submit information to CCC to support this assertion.

(f) CCC may enter into a multi-country agreement in which donated commodities are delivered to one country and activities are carried out in another.

(g) CCC may provide donated commodities and CCC-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019; 87 FR 53365, Aug. 31, 2022]

§ 1499.6 Payments.

(a) If a recipient arranges for transportation in accordance with §1499.7(b)(2), CCC will, as specified in the agreement, pay the costs of such transportation to the ocean carrier or to the recipient. The recipient must, as specified in the agreement, submit to CCC, arrange to be submitted to CCC, or maintain on file and make available to CCC, the following documents:

(1) The original, or a true copy, of each on board bill of lading indicating the freight rate and signed by the originating ocean carrier;

(2) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate;

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness; and

(iii) A signed copy of the Certificate of Loading issued by the National Cargo Bureau or a similar qualified independent surveyor;

(3) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(4) A signed copy of the U.S. Food Aid Booking Note or charter party covering ocean transportation of the cargo;

(5) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless CCC has determined that circumstances that could not have been reasonably anticipated or controlled (force majeure) have prevented the ocean carrier's arrival at the first port of discharge; and

(6) A request for payment of freight, survey costs other than at load port, and other expenses approved by CCC.

(b) If the agreement specifies that some or all of the documents listed in paragraph (a) of this section will be submitted to CCC, then CCC will not render payment for transportation services until it has received all of the specified documents.

(c) If a recipient arranges for transportation in accordance with §1499.7(b)(2), and the recipient uses a freight forwarder, the recipient must ensure that the freight forwarder is registered in the SAM and require the freight forwarder to submit the documents specified in paragraph (a) of this section. The recipient will ensure that the total commission or fees paid to intermediaries in the transportation procurement process will not exceed two and a half percent of the total transportation costs.

(d) In no case will CCC provide payment to a recipient for demurrage costs or pay demurrage to any other entity.

(e) If CCC has agreed to be responsible for the costs of transporting, storing, and distributing the donated commodities from the designated discharge port or the point of entry into the target country, and if the recipient will bear or has borne any of these costs, in accordance with the agreement, CCC will either provide an advance payment or a reimbursement to the recipient in the amount of such costs, in the manner set forth in the agreement.

(f) If the agreement authorizes the payment of CCC-provided funds, CCC will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of CCC-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, a recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by CCC to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by CCC and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain the balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) CCC will review all requests to roll over funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. CCC will consider factors such as the amount of funding that a recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) CCC will not approve any request for an advance or rollover of funds if the most recent financial report, as

specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and CCC or FAS, is more than three months in arrears.

(6)(i) A recipient must return to CCC any funds advanced by CCC that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (f)(6)(ii) and (iii) of this section will apply if the recipient submits a request to CCC before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and CCC approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from CCC, for the purposes of complying with the requirement in paragraph (f)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and CCC does not approve the rollover of some or all of the funds, such funds must be returned to CCC.

(iv) If a recipient must return funds to CCC in accordance with paragraph (f)(6) of this section, the recipient must return the funds by the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from CCC that it has denied the recipient's request to roll over the funds; provided, however, that CCC may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by CCC. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or CCC determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of CCC-provided funds. However, a recipient must be able to separately account for funds received, obligated, and expended under each agreement. When the recipient requires the use of funds that have been advanced by CCC to pay approved expenses under this agreement, the recipient may transfer the funds from the bank account located in the United States to a bank account in the target country.

(8) A recipient may retain, for administrative purposes, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(g) If a recipient is required to pay funds to CCC in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019; 87 FR 53365, Aug. 31, 2022]

§ 1499.7 Transportation of donated commodities.

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(b) Transportation to the designated discharge port or point of entry of donated commodities, and other goods such as bags that may be provided by CCC under the FFPr Program, will be arranged for under a specific agreement in the manner determined by CCC. Such transportation will be arranged for by:

(1) CCC in accordance with the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1, the Agriculture Acquisition Regulation (AGAR) in 48 CFR chapter 4, and directives issued by the Director, Office of Contracting and Procurement, USDA; or

(2) The recipient, with payment by CCC, in the manner specified in the agreement.

(c) A recipient that is responsible for transportation under paragraph (b)(2) of this section must declare in the transportation contract the point at which the ocean carrier will take custody of donated commodities to be transported.

(d) A recipient may only use the services of a transportation company that is legally operating in the country in

which it will be transporting the donated commodities and that would not have a conflict of interest in transporting such donated commodities.

(e) A recipient that arranges for transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist CCC in determining whether there is a potential conflict of interest, the recipient must submit to CCC a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any FFPr Program agreement to which the recipient is a party; and

(2) Is not affiliated with the recipient and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the recipient.

(f) A recipient will be responsible for arranging and paying for any transportation of the donated commodities after their arrival at the designated discharge port or point of entry for as long as the recipient has title to such donated commodities, except as may otherwise be provided in the agreement.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53366, Aug. 31, 2022]

§ 1499.8 Entry, handling, and labeling of donated commodities and notification requirements.

(a) A recipient must make all necessary arrangements for receiving the donated commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all donated commodities that will be distributed to beneficiaries to be imported and distributed free from all customs duties, tolls, and taxes. A recipient is encouraged to make similar arrangements, where possible, with the government of a country where donated commodities to be sold or bartered are delivered.

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the donated commodities passes to the recipient, except that CCC will arrange for transporting the donated commodities in accordance with §1499.7(b)(1) when CCC determines that it is applicable.

(c) A recipient must maintain the donated commodities in good condition from the time that it takes possession of such donated commodities at the designated discharge port, the point of entry, or the point of receipt from the originating carrier until their distribution, sale or barter.

(d) A recipient must comply with the following requirements in this paragraph, and the requirements specified in the agreement, regarding the acknowledgment of funding by USDA, the use of the USDA logo, and communications to the public:

(1) If a recipient arranges for the packaging or repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the Food for Progress Program of the United States Department of Agriculture; and

(iv) Includes a statement indicating that the donated commodities must not be sold, exchanged or bartered.

(2) If a recipient arranges for the processing and repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the processed product;

(iii) Includes a statement indicating that the processed product was made with commodities furnished by the Food for Progress Program of the

United States Department of Agriculture; and

(iv) Includes a statement indicating that the processed product must not be sold, exchanged or bartered.

(3) If a recipient distributes donated commodities that are not packaged, the recipient must display a sign at the distribution site that includes the name of the donated commodities, a statement indicating that the donated commodities are being furnished by the Food for Progress Program of the United States Department of Agriculture, and a statement indicating that the donated commodities must not be sold, exchanged, or bartered.

(4) A recipient must ensure that signs are displayed at all activity implementation and commodity distribution sites to inform beneficiaries that funding for the project was provided by the Food for Progress Program of the United States Department of Agriculture.

(5) A recipient must ensure that all communications to the public relating to the project, the activities, or the donated commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the Food for Progress Program of the United States Department of Agriculture. This includes project descriptions, fact sheets, signs, websites, press releases, social media, videos, reports, and other communications to the public. A recipient must also ensure that the USDA logo is used in communications to the public in accordance with the agreement.

(e)(1) At the request of a recipient, CCC may waive compliance with one or more of the requirements in paragraph (d) of this section. A recipient may submit a written request for a waiver at any time after the agreement has been signed. Except as provided in paragraph (e)(2) of this section, the recipient must comply with the requirement(s) while awaiting a determination by CCC regarding its waiver request.

(2) If a recipient determines that compliance with one or more of the requirements in paragraph (d) of this section poses an imminent threat of injury, loss of life, or destruction of property in the target country, the recipient must submit a request to CCC for a waiver of such requirement(s), with an explanation of the safety or security risk, as soon as possible. The recipient will not have to comply with such requirement(s) while awaiting a determination by CCC regarding its waiver request.

(f) In exceptional circumstances, CCC may, on its own initiative, waive one or more of the requirements in paragraph (d) of this section for programmatic reasons.

[87 FR 53366, Aug. 31, 2022]

§ 1499.9 Damage to or loss of donated commodities.

(a) CCC will be responsible for the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for the donated commodities while the recipient has title to the donated commodities. The title will transfer as specified in the agreement.

(b)(1) A recipient must inform CCC, in the manner set forth in the agreement, of any damage to or loss of donated commodities that occurs while the recipient has title to the donated commodities. The recipient must comply with the following procedures when reporting such damage to or loss of donated commodities:

(i) If the amount of the damage or loss is estimated to exceed $20,000, the recipient must notify CCC in writing immediately after becoming aware of such damage or loss and, in this notification, provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the amount of the damage or loss;

(ii) If the amount of the damage or loss is estimated to exceed $1,000 but not to exceed $20,000, the recipient must notify CCC in writing of the damage or loss within 15 days after the date that the recipient becomes aware of it and then provide detailed information about the damage or loss in the first report required to be filed under §1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss; and

(iii) If the amount of the damage or loss is estimated not to exceed $1,000,

the recipient must notify CCC, and provide detailed information about the damage or loss, in the first report required to be filed under §1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss.

(2) The recipient must take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs while the recipient has title to the donated commodities.

(c) A recipient will be responsible for arranging for an independent cargo surveyor to inspect the donated commodities upon discharge from the ocean carrier and prepare a survey or outturn report. The report must show the quantity and condition of the donated commodities discharged from the ocean carrier and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the ocean carrier, unless CCC determines that failure to do so was justified under the circumstances. For donated commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the ocean carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to CCC upon request, or in the manner specified in the agreement. CCC will reimburse the recipient for the reasonable costs of these services, as determined by CCC.

(d) If donated commodities are damaged or lost during the time that they are in the care of the ocean carrier:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to CCC;

(2) The recipient must provide to CCC the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost donated commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations and any other factors that may affect the accuracy of scale weights, and, if scales are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through ocean carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or ocean carrier records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(e) If donated commodities to which a recipient has title sustain damage in excess of $5,000 at any time prior to their distribution or sale under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by CCC and provide to CCC a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged donated commodities. The value of the donated

commodities prior to the damage must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, as well as such costs incurred by the recipient and paid by CCC. The recipient must inform CCC of the results of the inspection and indicate whether the damaged donated commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(f)(1) If a recipient has title to the donated commodities, the recipient must arrange for the recovery of that portion of the donated commodities designated as fit for the use authorized in the agreement. The recipient must dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.,* animal feed, fertilizer, industrial use, or another use approved by CCC, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the donated commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) A recipient must arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation under paragraph (f)(1) of this section.

(g) A recipient may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (f)(1) of this section and must use the retained proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(h) A recipient must notify CCC immediately and provide detailed information about the actions taken in accordance with paragraph (f) of this section, including the quantities, values and dispositions of donated commodities determined to be unfit.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53367, Aug. 31, 2022]

§ 1499.10 Claims for damage to or loss of donated commodities.

(a) CCC will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities while the recipient has title to the donated commodities.

(b) If the recipient has title to donated commodities that have been damaged or lost, and the amount of the damage or loss is estimated to exceed $20,000, the recipient must:

(1) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(2) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(3) Provide to CCC copies of all documentation relating to the claim.

(c)(1) The value of a claim for lost donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, as well as such costs incurred by the recipient and paid by CCC.

(2) The value of a claim for damaged donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, as well as such costs incurred by the recipient and paid by CCC, less any funds generated if such commodities are sold in accordance with § 1499.9(f)(1).

(d) If CCC determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, CCC may require the recipient to assign its rights to initiate or pursue the claim to CCC. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of a claim will be considered by CCC during the review of applications for subsequent food assistance awards.

(e)(1) A recipient may retain any funds obtained as a result of a claims

collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended in accordance with the agreement or for other purposes approved in advance by CCC.

(2) CCC will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the donated commodities or a portion thereof, CCC will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53367, Aug. 31, 2022]

§ 1499.11 Use of donated commodities, sale proceeds, CCC-provided funds, and program income.

(a) A recipient must use the donated commodities, any sale proceeds, CCC-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use donated commodities, sale proceeds, CCC-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of CCC.

(c) A recipient must not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of donated commodities by the military forces of any government or insurgent group without the specific authorization of CCC.

(e) A recipient must not use sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanctions program, as specified in the agreement.

(f) A recipient may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the recipient is disposing of damaged donated commodities as specified in § 1499.9(f). The recipient must sell donated commodities at a reasonable market price. The recipient must obtain approval of its proposed sale price from CCC before selling donated commodities. The recipient must use any sale proceeds, interest, program income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(g) A recipient must deposit and maintain all sale proceeds, CCC-provided funds, and program income in a bank account until they are used for a purpose authorized under the agreement or the CCC-provided funds are returned to CCC in accordance with § 1499.6(f)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or CCC determines that this requirement would constitute an undue burden. The recipient must comply with the requirements in § 1499.6(f)(7) with regard to the deposit of advance payments by CCC.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of such adjustments does not exceed the amount specified in the agreement. Adjustments beyond these limits require the prior approval of CCC.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.1, to other categories of expense without the prior approval of CCC.

(i) A recipient may use sale proceeds, CCC-provided funds, or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, a recipient must not use sale

proceeds, CCC-provided funds, or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use sale proceeds, CCC-provided funds, or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If the use of sale proceeds, CCC-provided funds, or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the sale proceeds, CCC-provided funds, or program income for this purpose until it receives written approval from CCC.

(j) A recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, a recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) A recipient must enter into a written contract with each provider of goods, services, or construction work that is valued at or above the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient and to comply with any other applicable requirements that may be specified by CCC in the agreement. The recipient must submit a copy of each signed contract to CCC, as specified in the agreement.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45059, Aug. 28, 2019; 87 FR 53367, Aug. 31, 2022]

§ 1499.12 Monitoring and evaluation requirements.

(a) A recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from CCC before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) A recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) A recipient must inform CCC, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from CCC to resolve the situation.

(d) A recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from CCC before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to CCC as part of its application, pursuant to §1499.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3) Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may

be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, a recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition, provided that CCC may determine that, for a particular agreement, the staff of the independent third party evaluator is not required to have specialized experience in conducting evaluations of programs involving one or more of these four areas.

(2) A recipient must provide a written certification to CCC that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) CCC will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) A recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain a separate budget for monitoring and evaluation, with separate budget line items for dedicated recipient monitoring and evaluation staff and independent third-party evaluation contracts.

(2) Personnel at a recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) CCC may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection, with any evaluation conducted or commissioned by CCC. Such evaluations may be conducted by CCC internally or by a CCC-hired external evaluation contractor.

§ 1499.13 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.328 through 200.330.

(b) A recipient must submit financial reports to CCC, by the dates and for the reporting periods specified in the agreement. Such reports must provide an accurate accounting of sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions. When reporting financial information under the agreement, the recipient must include the amounts in U.S. dollars and, if funds are held in local currency, the exchange rate.

(c)(1) A recipient must submit performance reports to CCC, by the dates and for the reporting periods specified in the agreement. These reports must include the following:

(i) The information required in 2 CFR 200.329(c)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baseline values, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline values and the targets established for the period. When actual

accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report;

(ii) Information covering the receipt, handling, and disposition of the donated commodities, until all of the donated commodities have been distributed, sold, or bartered and such disposition has been reported to CCC; and

(iii) If the agreement authorizes the sale or barter of donated commodities, information covering the receipt and use of any sale proceeds, goods and services derived from barter, and program income, until all of the sale proceeds, goods and services derived from barter, and program income have been disbursed or used and reported to CCC.

(2) A recipient must ensure the accuracy and reliability of the performance data submitted to CCC in performance reports. At any time during the period of performance of the agreement, CCC may review the recipient's performance data to determine whether it is accurate and reliable. The recipient must comply with all requests made by CCC or an entity designated by CCC in relation to such reviews.

(d) Baseline, midterm, and final evaluation reports are required for all agreements, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline in the CCC-approved evaluation plan. Evaluation reports submitted to CCC may be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to CCC, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by CCC or by providing the ocean carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the donated commodities sails from the final U.S. load port.

(f) If requested by CCC, a recipient must provide to CCC additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that CCC receives an extension request at least five business days prior to the reporting deadline. CCC may decline to consider a request for an extension that it receives after this time period. CCC will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. CCC will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.334 through 200.338. The date of submission of the final expenditure report, as referenced in 2 CFR 200.334, will be the date of submission of the final financial report required by paragraph (b) of this section, as prescribed by CCC. The recipient must retain copies of and make available to CCC all sales receipts, contracts, or other documents related to the sale or barter of donated commodities and any goods or services derived from such barter, as well as records of dispatch received from ocean carriers.

[87 FR 53368, Aug. 31, 2022]

§ 1499.14 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive donated commodities, sale proceeds, CCC-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.332. The recipient must provide a copy of each subagreement to CCC, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, CCC-provided funds, or program income to the subrecipient.

(b) A recipient must include the following requirements in a subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, CCC will make the determination.

(2) The subrecipient is prohibited from using sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanctions program, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any donated commodities, sale proceeds, CCC-provided funds, interest, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) The subrecipient is responsible for complying with the applicable compliance requirements set forth in the subaward in accordance with §1499.18 and 2 CFR 200.501(h). Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A recipient must monitor the actions of a subrecipient as necessary to ensure that donated commodities, sale proceeds, CCC-provided funds, and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45060, Aug. 28, 2019; 87 FR 53368, Aug. 31, 2022]

§1499.15 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and CCC determines that the noncompliance cannot be remedied by imposing additional conditions, CCC may take one or more of the actions set forth in 2 CFR 200.339 and, if appropriate, initiate a claim against the recipient. CCC may also initiate a claim against a recipient if the donated commodities are damaged or lost, or the sale proceeds, goods received through barter, CCC-provided funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53368, Aug. 31, 2022]

§1499.16 Suspension and termination of agreements.

(a) CCC may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.339 or 200.340 for suspension or termination by CCC has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste of the donated commodities, or distribution of the donated commodities will result in a substantial disincentive to or interference with domestic production or marketing in the target country.

(b) The termination provisions in 2 CFR 200.340 and 200.341 will apply to an agreement.

(c) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed donated commodities and must dispose of such commodities only as agreed to by CCC;

(2) Is responsible for any sale proceeds, CCC-provided funds, interest, or program income that have not been disbursed and must use or return them only as agreed to by CCC; and

(3) Must comply with any closeout and post-closeout provisions specified

in the agreement and 2 CFR 200.344 and 200.345.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45060, Aug. 28, 2019; 87 FR 53368, Aug. 31, 2022]

§ 1499.17 Opportunities to object and appeals.

(a) CCC will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by CCC pursuant to § 1499.15. CCC will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. For example, if the action taken by CCC pursuant to § 1499.15 is to initiate suspension or debarment proceedings as authorized under 2 CFR parts 180 and 417, then the requirements in 2 CFR parts 180 and 417 will apply instead of the requirements in this section. In the absence of other applicable statutory or regulatory requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the official specified in the agreement within 30 days after the date of CCC's written notification to the recipient of the CCC action being challenged. This official will endeavor to notify the recipient of his or her determination (the initial determination) within 60 days after the date that CCC received the recipient's written objection.

(c) The recipient may appeal the initial determination to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that CCC received the appeal. The determination of the Administrator will be the final determination of CCC. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

[81 FR 62605, Sept. 12, 2016, as amended at 84 FR 45060, Aug. 28, 2019]

§ 1499.18 Audit requirements.

(a) Subpart F, Audit Requirements, of 2 CFR part 200 applies to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial audit of the agreement or subagreement, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the recipient or subrecipient expends Federal awards under only one CCC program during such fiscal year; or

(ii) A financial audit of all Federal awards from CCC, in accordance with GAO's Government Auditing Standards, if the recipient or subrecipient expends Federal awards under multiple CCC programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) CCC may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, CCC must provide funds under the agreement for this purpose, and the recipient or subrecipient, as

applicable, must arrange for such audit and submit it to CCC.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to CCC within 60 days after the end of its fiscal year.

(f) CCC, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If CCC conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, CCC will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1499.19 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and have been assigned OMB control number 0551–0035. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

[81 FR 62605, Sept. 12, 2016, as amended at 87 FR 53369, Aug. 31, 2022]

CHAPTER XV—FOREIGN AGRICULTURAL SERVICE, DEPARTMENT OF AGRICULTURE

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PARTS 1500–1519 [RESERVED]

PART 1520—AVAILABILITY OF INFORMATION TO THE PUBLIC

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AUTHORITY: 5 U.S.C. 552

SOURCE: 67 FR 45895, July 11, 2002, unless otherwise noted.

§ 1520.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture 7 CFR, part 1—Administrative Regulations, Subpart A—Official Records, §1.3, Agency Implementing Regulations, for the Freedom of Information Act (5 U.S.C. 552). The Secretary's Regulations, as implemented by the regulations in this part govern the availability of records of the Foreign Agricultural Service (FAS) to the public.

§ 1520.2 Location and hours.

Members of the public should contact the FAS FOIA Officer to arrange a place and time to review documents. Contact the U.S. Department of Agriculture, Foreign Agriculture Service, Public Affairs Division, 1400 Independence Avenue SW., Washington, DC 20250–1004. The office will be open from 8:30 a.m. to 5 p.m. Monday through Friday, except national holidays, Tel.: 202–720–3448, Fax: 202–720–1727.

§ 1520.3 Indexes/Record systems.

5 U.S.C. 552(a)(2) required that each agency publish or otherwise make available a current index of all materials for public inspection and copying. The Foreign Agricultural Service maintains the following record systems. FAS regulations, manuals, and notices; attache reports; general publications; and statements of policy and procedures for various FAS programs. Copies of the FAS index may be obtained free of charge by contacting the office specified in §1520.2.

§ 1520.4 Agency FOIA Officer.

Requests for records shall be made to the Freedom of Information Officer, Public Affairs Division, Foreign Agricultural Service, Ag Box 1004, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1004. Tel.: 202–720–3448, Fax: 202–720–1727.

§ 1520.5 Agency Appeal Official.

Any person whose request under §1520.4 is denied shall have the right to appeal such a denial. For appeals, write to the following official and mark your letters ''FOIA Appeal'': Administrator, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1004, Attn: FOIA Appeal.

§ 1520.6 Other information.

Many documents are available to the public without having to file an FOIA request. These include press releases, speeches, congressional testimony, program regulations, and some letters and memoranda. Some of this information can be found on the FAS web site, *www.fas.usda.gov*. Also, the FAS annual FOIA report is available on the agency's web site at *www.fas.usda.gov*. Click on FOIA at the bottom of the page. To request a paper copy of the FAS FOAI annual report, write to: Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Ag Box 1004, Washington, DC 20250–1004, Attn: Freedom on Information Officer.

PART 1530—THE REFINED SUGAR RE-EXPORT PROGRAM, THE SUGAR CONTAINING PRODUCTS RE-EXPORT PROGRAM, AND THE POLYHYDRIC ALCOHOL PROGRAM

Sec.

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AUTHORITY: Additional U.S. note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); 19 U.S.C. 3314; Proc. 6641, 58 FR 66867, 3 CFR, 1994 Comp., p. 172; Proc. 6763, 60 FR 1007, 3 CFR, 1995 Comp., p. 146.

SOURCE: 64 FR 7062, Feb. 12, 1999, unless otherwise noted.

§ 1530.100 General statement.

This part provides regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program. Under these provisions, refiners may enter raw sugar unrestricted by the quantitative limit established for the raw sugar tariff-rate quota or the requirements of certificates of quota eligibility provided for in 15 CFR part 2011, as long as licensees under the programs export an equivalent quantity of refined sugar, either as refined sugar or as an ingredient in sugar containing products, or use the refined sugar in the production of certain polyhydric alcohols.

§ 1530.101 Definitions.

Affiliated persons means two or more persons where one or more of said persons directly or indirectly controls or has the power to control the other(s), or, a third person controls or has the power to control the others. Indications of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.

Agent means a person who represents the licensee in any program transaction. An agent shall not, at any time, own any of the product produced by the program licensee. Agents may include brokers, shippers, freight forwarders, expediters, and co-packers.

Bond or letter of credit means an insurance agreement pledging surety for the entry of foreign sugar without the required re-export within the program guidelines.

Certain polyhydric alcohols means any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food.

Co-packer means a person who adds value to a licensed manufacturer's product, or produces a product for export by a licensed manufacturer.

Date of entry means the date raw sugar enters the U.S. Customs Territory.

Date of export means the date refined sugar or sugar containing products are exported from the U.S. Customs Territory, or, if exported to a restricted foreign trade zone, the date shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date that ownership of program sugar is conveyed from a refiner to a manufacturer or producer licensee.

Day means calendar day. When the day for complying with an obligation under this part falls on a weekend or Federal holiday, the obligation may be completed on the next business day.

Documentation agreement means a signed and notarized letter from a licensee specifying certain documentation that the licensee shall obtain and maintain on file before said licensee requests from USDA updating of a license balance.

Enter or entry means importation into the U.S. Customs Territory, or withdrawal from warehouse for consumption, as those terms are used by the U.S. Customs Service.

Export means the conveyance (shipment) of sugar or a sugar containing product from a licensee under this part to a country outside the U.S. Customs Territory, or to a restricted foreign trade zone.

Licensing Authority means a person designated by the Director, Import Policies and Programs Division, Foreign Agricultural Service, USDA.

Manufacturer means a person who produces or causes to be produced on their behalf a sugar containing product for export under the provisions of this part.

Person means any individual, partnership, corporation, association, estate, trust, or any other business enterprise or legal entity.

Program sugar means sugar that has been charged or credited to the license of a licensee in conformity with the provisions of this part.

Program transaction means an appropriate entry, transfer, use, or export of program sugar.

Refined sugar means any product that is produced by a refiner by refining raw cane sugar and that can be marketed as commercial, industrial or retail sugar.

Refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Sugar containing product means any product, other than those products normally marketed by cane sugar refiners, that is produced from refined sugar or to which refined sugar has been added as an ingredient.

Transfer means the transfer of legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of certain polyhydric alcohols for the production of sugar containing products or the production of certain polyhydric alcohols.

Unique number means a tracking number established by a licensee for a transaction (entry, transfer, export, or use). A unique number is established for a transaction to or from a specific country or licensee. The unique number is also assigned by the licensee to a file that contains all of the supporting documentation for the transaction for which it was established. The unique number is the means by which program transactions will be tracked.

§ 1530.102 Nature of the license.

(a) A person who wishes to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program must first obtain a license from the USDA, through the Licensing Authority.

(b) A license under the Refined Sugar Re-export Program permits a refiner to enter raw cane sugar under subheading 1701.11.20 of the HTS, and export an equivalent quantity of refined sugar onto the world market or transfer an equivalent quantity of refined sugar to licensees under the Sugar Containing Products Re-export Program or the Polyhydric Alcohol Program.

(c) A license under the Sugar Containing Products Re-export Program or Polyhydric Alcohol Program permits licensees to receive transfers and export an equivalent quantity of sugar as an ingredient in sugar containing products, or use an equivalent quantity of sugar in the production of certain polyhydric alcohols.

(d) All refining, manufacturing, and production shall be accomplished in the U.S. Customs Territory, and within time-frames and quantity limitations prescribed in this part. Program sugar and non-program sugar are substitutable.

(e) A licensee must establish a bond or a letter of credit in favor of the U.S. Department of Agriculture to charge program sugar in anticipation of the export or transfer of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols.

§ 1530.103 License eligibility.

(a) A raw cane sugar refiner, a manufacturer of sugar containing products, or a producer of certain polyhydric alcohols, that owns and operates a facility within the U.S. Customs Territory, is eligible for a license to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program, respectively.

(b) No person may apply for or hold more than one license, including a license held by an affiliated person.

(c) Notwithstanding paragraph (b) of this section, a person who owns one or more wholly-owned subsidiary corporations manufacturing sugar containing products or producing certain polyhydric alcohols, which would otherwise qualify for an individual license, is eligible for a consolidated license to cover the program transactions and other program activities of both the parent corporation and the subsidiary

corporation(s). The program transactions and other program activities of the subsidiary corporation(s) covered by a consolidated license shall be treated as the activities of the corporation holding the consolidated license.

(d) Notwithstanding paragraph (c) of this section, each wholly-owned subsidiary manufacturing sugar containing products or producing certain polyhydric alcohols may establish a license for program activities instead of the parent corporation establishing a consolidated license. The sum total of license limits for the parent corporation and its wholly-owned subsidiary corporation(s) shall not exceed the quantitative limits established in §1530.105 of this part.

§1530.104 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority and shall submit the following information:

(1) The name and address of the applicant;

(2) The address at which the applicant will maintain the records required under §1530.110;

(3) The address(es) of the applicant's processing plant(s), including any wholly-owned subsidiary(s) and plant(s) in the case of a consolidated license, and including those of any co-packer(s);

(4) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the refined sugar in the product;

(5) In the case of a sugar containing product, the percentage of refined sugar (100 degree polarity), on a dry weight basis, contained in such product(s);

(6) In the case of polyhydric alcohol, the quantity of refined sugar used producing certain polyhydric alcohols; and

(7) A certification explaining that the applicant is not affiliated with any other licensee, or explaining any affiliations, should they exist.

(b) A documentation agreement must be concluded with the Licensing Authority.

(c) If any of the information required by paragraph (a) of this section changes, the licensee shall promptly apply to the Licensing Authority to amend the application to include such changes.

§1530.105 Terms and conditions.

(a) A licensed refiner (refiner) shall, not later than 90 days after entering a quantity of raw cane sugar under subheading 1701.11.20 of the HTS, export or transfer an equivalent quantity of refined sugar if the entry results in a positive license balance.

(b) A licensed sugar containing products manufacturer (manufacturer) or a licensed polyhydric alcohol producer (producer) shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product if the transfer results in a positive license balance, or use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols if the transfer results in a positive license balance, respectively.

(c) Notwithstanding paragraphs (a) and (b) of this section, licensees may receive credit for the exportation or transfer of refined sugar, the exportation of a sugar containing product, or the production of certain polyhydric alcohols prior to the corresponding date of entry of raw cane sugor the date of transfer of refined sugar.

(d) Licensees are encouraged to submit monthly program transaction reports, but shall report no later than 90 days from the date of entry, transfer, export, or use.

(e) A refiner may enter raw sugar, or a manufacturer or producer may receive a transfer of refined sugar, in anticipation of the transfer or export of refined sugar (refiner), the export of sugar in sugar containing products (manufacturer) or the production of a polyhydric alcohol (producer) not to exceed the value of a bond or letter of credit, which must be established pursuant to §1530.107 of this part. The value of a bond or letter of credit shall not exceed the license limits established in this section.

(f) A refiner shall not exceed a license balance of 50,000 metric tons, raw value for the sum of all charges and credits.

(g) A refiner may enter raw sugar from Mexico and re-export, within 30 days of entry, refined sugar to Mexico without a charge against the refiner's license balance. If the refined sugar is not re-exported to Mexico within 30 days of entry, the license shall be charged the quantity that has not been re-exported.

(h) A manufacturer or a producer shall not exceed a license balance of 10,000 short tons, refined value for the sum of all charges and credits.

(i) A manufacturer's or a producer's consolidated license balance, or the sum of a parent company and wholly-owned subsidiary license balances if held separately, shall not exceed a license balance of 25,000 short tons, refined value for the sum of all charges and credits.

(j) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar transferred, exported, or used does not need to be the same sugar produced by refining raw sugar entered under subheading 1701.11.20 of the HTS.

(k) A licensee may use an agent to carry out the requirements of participation in the program. The licensee must retain ownership of and responsibility for the product until exported from the U.S. Customs Territory, to a restricted foreign trade zone, or used in the production of certain polyhydric alcohols, and must establish and maintain sufficient documentation, as agreed in the documentation agreement pursuant to §1530.110, to substantiate export of the product or the production of certain polyhydric alcohols.

(l) A license may be assigned only with the written permission of the Licensing Authority and subject to such terms and conditions as the Licensing Authority may impose.

(m) The Licensing Authority may impose such conditions, limitations or restrictions in connection with the use of a license at such time and in such manner as the Licensing Authority, at his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

§1530.106 License charges and credits.

(a) A license shall be charged or credited for the quantity of sugar entered, transferred, exported, or used, adjusted to a dry weight basis. Refiner quantities shall be adjusted to raw value, using the formulas set forth in paragraphs (a) (1), (2), and (3) of this section. Manufacturer and producer quantities shall be adjusted to 100 degrees polarity on a dry weight basis.

(1) To adjust the raw value for sugar with a polarization of less than 92 degrees, divide the total sugar content by 0.972 (polarization × outturn weight/.972).

(2) To adjust the raw value for sugar with polarization of 92 degrees or above, multiply the polarization times 0.0175, subtract 0.68, and multiply the difference by the outturn weight (((polarization × 0.0175)−0.68) × outturn weight).

(3) To determine the quantity of refined sugar that must be transferred or exported to equal a corresponding quantity of entered raw sugar charged to a license, divide the quantity of entered raw sugar by 1.07 (raw quantity/1.07).

(b) [Reserved]

§1530.107 Bond or letter of credit requirements.

(a) The licensee may charge program sugar in anticipation of the transfer or export of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols, if the licensee establishes a performance bond or a letter of credit with the U.S. Department of Agriculture, which meets the criteria set forth in this section.

(b) The bond or letter of credit may cover entries made either during the period of time specified in the bond (a term bond) or for a specified entry (a single entry bond).

(c) Only the licensee who will refine the sugar, manufacture the sugar containing product, or produce certain polyhydric alcohols may be the principal on the bond or letter of credit covering such sugar to be re-exported or used in the production of certain polyhydric alcohols. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond or letter of credit shall be made effective

no later than the date of entry of the sugar for refiners or the date of transfer of the corresponding sugar for manufacture into a sugar containing product or certain polyhydric alcohols.

(e) The amount of the bond or letter of credit shall be equal to 20 cents per pound of sugar to be entered under the license.

(f) If a licensee fails to qualify for credit to a license within the specified time period of the date of export or use of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar, payment shall be made to the U.S. Treasury. The payment shall be equal to the difference between the Number 11 contract price and the Number 14 contract price (New York Coffee, Sugar and Cocoa Exchange) in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export or use was required, whichever difference is greater. The difference shall be multiplied by the quantity of refined sugar, converted to raw value, that should have been exported in compliance with this part. If there was not a Number 11, or a Number 14 contract price for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

§ 1530.108 Revocation or surrender of licenses.

(a) A license may be revoked upon written notice by the Licensing Authority.

(b) A licensee may surrender a license when the sum of all credits is equal to or greater than the sum of all charges.

§ 1530.109 Reporting.

(a) A licensee may submit as often as monthly for charges and credits against a license balance, but must submit at least a quarterly report to the Licensing Authority not later than 90 days after the earliest transaction in the report for which credits or charges are being submitted. The licensee need not report when there have not been transactions during the reporting period.

(b) Reports may be submitted by e-mail, U.S. mail, private courier, or in person, but must be in an integrated database format acceptable to the Licensing Authority. A copy of this format may be obtained from the Licensing Authority. Applicants unable to submit a report in the specified electronic format may seek a temporary waiver to permit them to submit the report on paper.

(c) The reports must include the following for all program transactions:

(1) A unique number associated with the transaction;

(2) The date of the entry, transfer (only a refiner shall report transfers to the Licensing Authority), export, or use;

(3) The quantity of program sugar entered, transferred, exported as refined sugar, or used in the production of certain polyhydric alcohols;

(4) The licensee's license number, or if a transfer is being reported, the licensee's license number as well as the transfer recipient's license number;

(5) The country of origin (entry of raw sugar) or final destination (refined exports), using the exact country code designated in the HTS; and

(6) The initial and final polarization, and final weight (when available) for entries of raw sugar.

(d) Licensees have an affirmative and continuing duty to maintain the accuracy of the information contained in previously submitted reports.

(1) The licensee shall immediately notify the Licensing Authority and promptly request that previously claimed credits be charged back upon discovery that previously claimed exports of refined sugar, refined sugar in sugar containing products, or refined sugar used in the production of polyhydric alcohol were re-entered into the U.S. Customs Territory without substantial transformation, not used in the production of certain polyhydric alcohols, made under a false underlying proof of export, or made but previously submitted exports do not otherwise satisfy the requirements of regulations or the documentation agreement.

(2) Charge backs shall be as of the date of the erroneously claimed credit.

§ 1530.110 Records, certification, and documentation.

(a) A licensee shall establish a documentation agreement with the Licensing Authority before submitting for credit against a license. The licensee shall propose to the Licensing Authority a list of documents to substantiate entries, transfers, exports, or use as appropriate. The Licensing Authority shall consider the licensee's proposal to assure that it provides that a program transaction is fully substantiated, and shall then respond in writing to the licensee in a timely fashion outlining any deficiencies. Once agreed, the licensee shall submit a notarized letter specifying the documents to be maintained on file and certifying that the charges and credits made pursuant to § 1530.106 will be kept on file, identifiable by a unique number, and available for inspection pursuant to § 1530.110.

(b) For all transactions, the documentation shall:

(1) Substantiate the information required in § 1530.109 (c), and the completion of the reported transaction;

(2) Establish the buyer and seller specifications for a transaction;

(3) Include all U.S. Customs forms submitted in the entry or export process;

(4) Provide the correct telephone numbers and addresses of any agents, consignees, foreign purchasers, and non-vessel operating common carriers used in completing the transaction;

(5) Indicate the port of entry or export for the program transaction;

(6) Provide the percentage of sugar in a sugar containing product or certain polyhydric alcohols; and

(7) Provide the name of export carrier, vessel name, and container number.

(c) The licensee shall maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction.

(d) Upon request, the licensee shall make the records, outlined by the documentation agreement and identified (associated) by the unique number assigned by the licensee to the program transaction as reported to the Licensing Authority for posting against a license balance, available for inspection and copying by the Licensing Authority, the Compliance Review Staff of the Foreign Agricultural Service, and/or the Office of the Inspector General, USDA, the U.S. Department of Justice, or any U.S. Government regulatory or investigative office.

§ 1530.111 Enforcement and penalties.

(a) The Licensing Authority may revoke credits granted on a license if the credits granted do not meet the requirements set forth in the regulations of this part, or if the licensee does not voluntarily charge back credits erroneously claimed in accordance with these regulations. The Licensing Authority may also recommend revocation of a license, if the licensee has been in violation of § 1530.109 (c) of this part.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license upon recommendation of the Licensing Authority. Suspension of a license will be governed by 2 CFR part 417, subpart G, and debarment will be governed by 2 CFR part 417, subpart H.

[64 FR 7062, Feb. 12, 1999, as amended at 85 FR 31938, May 28, 2020]

§ 1530.112 Administrative appeals.

(a) The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director, Import Policies and Programs Division, Foreign Agricultural Service (Director), or his or her designee. The decision on such an appeal shall be made by the Director, and will be governed by § 3017.515 of this title. The appeal must be filed not later than 30 days after the date of the Licensing Authority's determination, and shall contain the licensee's written argument.

(b) The licensee may request an informal hearing. The Director shall arrange a place and time for the hearing, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(c) The licensee may be represented by counsel, and shall have full opportunity to present any relevant evidence, documentary or testimonial. The Director may permit other individuals to present evidence at the hearing

and the licensee shall have an opportunity to question those witnesses.

(d) The licensee may request a verbatim transcript of the hearing, and shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(e) The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis thereof. The determination on appeal exhausts the licensee's administrative remedies.

§ 1530.113 Waivers.

Upon written application of the licensee or at the discretion of the Licensing Authority, and for good cause, the Licensing Authority may extend the period for transfer, export, or production, and/or may temporarily increase a maximum license limit, may extend the period for submitting regularly scheduled reports, or may temporarily waive or modify any other requirement imposed by this part if the Licensing Authority determines that such a waiver will not undermine the purpose of the relevant program or adversely affect domestic sugar policy objectives. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.114 Implementation.

Current program participants may qualify under this rule upon concluding a documentation agreement with the Licensing Authority, but must conclude a documentation agreement within 24 months of the effective date of this rule. Participant license balances, as of the effective date of this rule, shall continue under this rule.

§ 1530.115 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35. OMB number 0551–0015 has been assigned and will expire November 30, 1999.

PART 1540—INTERNATIONAL AGRICULTURAL TRADE

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

Sec.

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1540.4 Contents of request.
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Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

1540.20 Applicability of subpart.
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Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

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1540.41 Definitions.
1540.42 Who may file request.
1540.43 Contents of request.
1540.44 Submission of recommendations by the Secretary of Agriculture.
1540.45 Information.

AUTHORITY: Sec. 213(f), Pub. L. 98–67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301; sec. 404, Pub. L. 98–573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

AUTHORITY: Sec. 213(f), Pub. L. 98–67, 97 Stat. 391 (19 U.S.C. 2703(f); 5 U.S.C. 301.

SOURCE: 49 FR 22265, May 29, 1984, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.1 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Economic Recovery Act of 1983, title II of Pub. L. 98–67, 97 Stat. 384 (19 U.S.C. 2701 *et seq.*) (the Act).

§ 1540.2 Definitions.

(a) *Perishable product* means:

(1) Live plants provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (TSUS);

(2) Fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(3) Fresh mushrooms provided for in item 144.10 of the TSUS;

(4) Fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(5) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) Concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) *Beneficiary country* means any country listed in section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.3 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.4 Contents of request.

A request for emergency action under section 213(f) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such requests shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) The beneficiary country(ies) of origin of the allegedly injurious imports;

(c) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(d) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(e) A statement indicating why emergency action would be warranted under section 213(f) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of the duty-free treatment accorded under the Act).

A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.5 Submission of recommendations.

If the Secretary has reason to believe that the perishable product which is the subject of a petition under § 1540.4 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly

competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under §1540.4 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary shall publish a notice of such determination and will so advise the petitioner within 14 days after the filing of the petition.

§1540.6 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 213(f) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§1540.7 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551–0018 has been assigned.

Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

AUTHORITY: Sec. 404, Pub. L. 98–573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

SOURCE: 50 FR 43692, Oct. 29, 1985, unless otherwise noted.

CROSS REFERENCE: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§1540.20 Applicability of subpart.

This subpart applies to requests filed with the Department of Agriculture under section 404 of the Trade and Tariff Act of 1984, Pub. L. 98–573, for emergency relief from imports of certain perishable products from Israel entering the United States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended.

§1540.21 Definition.

Perishable product means:

(a) Live plants provided for in subpart A of part 6 of schedule 1 of the 1985 Tariff Schedules of the United States (the ''TSUS'');

(b) Fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(c) Fresh mushrooms provided for in item 144.10 of the TSUS;

(d) Fresh fruits provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21 and 149.50 of the TSUS;

(e) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(f) Concentrated citrus fruit juice provided for in items 165.25, 165.29 and 165.36 of the TSUS.

§1540.22 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported from Israel into the United States at a reduced duty or duty-free under the provisions of a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended, in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§1540.23 Contents of request.

A request for emergency action under section 404 of the Trade and Tariff Act of 1984 shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from Israel in increased quantities as compared with imports of the same product from Israel during a previous representative period of time (including a statement of why the period selected by the petitioner should be considered to be representative);

(c) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from Israel; and

(d) A statement indicating why emergency action would be warranted under section 404 (including all available evidence that the injury caused by the increased quantities of imports from Israel would be relieved by the withdrawal of the reduction of the duty or elimination of the duty-free treatment provided to the product under the trade agreement). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.24 Determination of the Secretary of Agriculture.

If the Secretary of Agriculture has reason to believe that the perishable product(s) which is the subject of a petition under this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under §1540.23 shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary, within 14 days after the filing of the petition, will publish in the FEDERAL REGISTER a notice of such determination and will so advise the petitioner.

§ 1540.25 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 404 of the Trade and Tariff Act of 1984 should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.26 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551–0023 has been assigned.

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

AUTHORITY: Title II, sec. 204(e), Pub. L. 102–182, 105 Stat. 1239 (19 U.S.C. 3203(e)); 5 U.S.C. 301.

SOURCE: 58 FR 16104, Mar. 25, 1993, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.40 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 204(e) of the Andean Trade Preference Act, title II of Public Law 102–182, 105 Stat. 1236 (19 U.S.C. 3201 *et seq.*) (the ''Act'').

§ 1540.41 Definitions.

(a) *Perishable product* means:

(1) Live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule (HTS);

(2) Fresh or chilled vegetables provided in heading 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(3) Fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(4) Concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(b) *Beneficiary country* means any country listed in subsection 203(b)(1) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.42 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group of workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.43 Contents of request.

(a) A request for emergency action under section 204(e) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(1) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(2) The beneficiary country(ies) of origin of the allegedly injurious imports;

(3) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(4) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(5) A statement indicating why emergency action would be warranted under section 204(e) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of duty-free treatment accorded under the Act).

(b) A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.44 Submission of recommendations by the Secretary of Agriculture.

If the Secretary has reason to believe that the perishable product(s) which is the subject of a petition under §1504.43 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under §1540.43 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary within 14 days after the filing of the petition shall publish a notice of such determination and so advise the petitioner.

§ 1540.45 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation

of section 204(e) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Issued at Washington, DC this 19th day of March, 1993.

PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS

Sec.

1560.1 Scope.
1560.2 Definitions.
1560.3 Determination of fresh fruit or vegetable.
1560.4 Calculation of data to support imposition of temporary duty.
1560.5 Calculation of data to support removal of temporary duty.

AUTHORITY: Secs. 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449 (102 Stat. 1855 and 1865–67).

SOURCE: 54 FR 1327, Jan. 13, 1989, unless otherwise noted.

§ 1560.1 Scope.

This part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

§ 1560.2 Definitions.

The following definitions shall be applicable to this part:

(a) *Administrator* means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) *Average Monthly Import Price* means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) *Average Planted Acreage* means the average of the annual planted acreage in the U.S. for a particular fresh fruit or vegetable for the preceding five years excluding the years with the highest and lowest acreages based on available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) *Canadian fresh fruit or vegetable* means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) *Corresponding Five-Year Average Monthly Import Price* for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) *F.O.B. Point of Shipment Price in Canada* means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) *Fresh Fruit or Vegetable* means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) *HS heading* means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01	Potatoes, fresh or chilled.
07.02	Tomatoes, fresh or chilled.
07.03	Onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled.
07.04	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05	Lettuce (lactica sativa) and chicory (cichorium spp.), fresh or chilled.
07.06	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07	Cucumbers and gherkins, fresh or chilled.
07.08	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09	Other vegetables (excluding truffles), fresh or chilled.
08.06.10	Grapes, fresh.

HS tariff heading	Description
08.08.20	Pears and quinces, fresh.
08.09	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
08.10	Other fruit (excluding cranberries and blueberries), fresh.

(i) *Import Price* means the unit value based on data available from the U.S. Customs Service of a particular Canadian fresh fruit or vegetable imported into the U.S. from Canada taking into account any other relevant data, as necessary.

(j) *Secretary* means the Secretary of Agriculture.

(k) *United States* means the United States Customs Territory which includes the fifty states, the District of Columbia and Puerto Rico.

(l) *Wine Grape* means grapes of labrusca, vinifera or hybrid vinifera varieties used for making wine.

(m) *Working Day* means a day which falls on a Monday through Friday, excluding holidays observed by the United States Government and days in which the U.S. Customs Service is not operating.

§ 1560.3 Determination of fresh fruit or vegetable.

The specific group of articles that will be monitored as a particular fresh fruit or vegetable will be determined based on the practicability of monitoring at the eight digit subheading level of the Harmonized Tariff Schedule of the United States. The determination of practicability will be made by the Administrator taking into account: (a) The availability of reliable volume and price data on imports from Canada and data on U.S. planted acreage, (b) market differentiation for the group of articles, and (c) such other factors as the Administrator determines to be appropriate.

§ 1560.4 Calculation of data to support imposition of temporary duty.

The Administrator will inform the Secretary when the following conditions are met with respect to a particular fresh fruit or vegetable imported into the United States from Canada:

(a) If for each of five consecutive working days the import price of the fresh fruit or vegetable is below ninety percent of the corresponding five-year average monthly import price for such fresh fruit or vegetable excluding the years with the highest and lowest corresponding monthly import price; and

(b) The planted acreage in the United States for such fresh fruit or vegetable based on the most recent data available is no higher than the average planted acreage over the preceding five years excluding the years with the highest and lowest planted acreages. For the purposes of calculating any planted acreage increase attributed directly to a reduction in wine grape planted acreage existing on October 4, 1987 shall be excluded.

§ 1560.5 Calculation of data to support removal of temporary duty.

During the time a temporary duty on a particular fresh fruit or vegetable is imposed pursuant to section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the Administrator will inform the Secretary if the F.O.B. point of shipment price in Canada of such fresh fruit or vegetable exceeds, for five consecutive working days, ninety percent of the corresponding five-year average monthly import price excluding the years with the highest and lowest average corresponding monthly import price, adjusted to an F.O.B. point of shipment price, if necessary, for that fresh fruit or vegetable.

PART 1570—EXPORT BONUS PROGRAMS

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

Sec.

1570.10 General statement.
1570.20 Criteria.

Subpart B—SOAP and COAP Drawback Certification

1570.1100 Drawback certification.

SOURCE: 56 FR 42223, Aug. 27, 1991, unless otherwise noted.

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

AUTHORITY: 7 U.S.C. 5663.

§ 1570.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Sunflowerseed Oil Assistance Program (SOAP) and Cottonseed Oil Assistance Program (COAP) administered by the Foreign Agricultural Service (FAS). These criteria are interrelated and will be considered together in order to select eligible countries for SOAP and COAP initiatives which will best meet the programs' objective. The objective of the programs is to encourage the sale of additional quantities of sunflowerseed oil and cottonseed oil in world markets at competitive prices. Under the SOAP and the COAP, bonuses are made available by FAS to enable exporters to meet prevailing world prices for sunflowerseed oil and cottonseed oil in targeted destinations. In the operation of the SOAP and the COAP, FAS will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1570.20 Criteria.

The criteria considered by FAS in reviewing proposals for SOAP and COAP initiatives will include, but not be limited to, the following:

(a) The expected contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. sunflowerseed and/or cottonseed oil;

(b) The subsidy requirements of proposed initiatives in relation to the sums made available to operate the programs in any given fiscal year; and

(c) The likelihood that sales facilitated by initiatives would have the unintended effect of displacing normal commercial sales of sunflowerseed and/or cottonseed oil.

Subpart B—SOAP and COAP Drawback Certification

AUTHORITY: 7 U.S.C. 5676.

§ 1570.1100 Drawback certification.

An offer submitted by an exporter to FAS for an export bonus under the SOAP or the COAP must contain, in addition to any other information required by FAS, a certification stating the following: ''None of the eligible commodity (sunflowerseed oil and/or cottonseed oil) has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax, or fee imposed under Federal law on an imported commodity or product.'' This certification must be signed by the exporter, if the exporter is an individual, or by a partner or officer of the exporter, if the exporter is a partnership or a corporation, respectively. FAS will reject any offer that does not contain the prescribed certification.

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator (FAS).
1580.301 Application for trade adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent year petition recertification.
1580.501 Administration.
1580.502 Maintenance of records, audits, and compliance.
1580.503 Recovery of overpayments.
1580.504 Debarment, suspension, and penalties.
1580.505 Appeals.
1580.506 Judicial review.
1580.602 Paperwork Reduction Act assigned number.

AUTHORITY: 19 U.S.C. 2401.

SOURCE: 75 FR 9089, Mar. 1, 2010, unless otherwise noted.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance (TAA) for Farmers program as authorized by the Trade Act of 1974, amended by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), and re-authorized and modified by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). The regulations establish procedures by which a group of producers of raw agricultural commodities or fishermen (jointly referred to as ''producers'') can petition for certification of eligibility and through which individual producers covered by a certified petition can apply for technical assistance and cash benefits for the development and implementation of approved business adjustment plans.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Agricultural commodity means any commodity in its raw or natural state; found in chapters 1, 3, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS).

Articles like or *directly competitive* generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A ''like'' product means substantially identical in inherent or intrinsic characteristics, and the term ''directly competitive'' means articles that are substantially equivalent for commercial purposes (*i.e.*, adapted to the same uses and essentially interchangeable therefore). For fishery products, competition could be either from farm-raised or wild-caught products.

Authorized representative means an entity that represents a group of agricultural commodity producers or fishermen.

Average price received by the producer means the average of the 3 marketing year prices per unit received by the producer from the first level of sales for the commodity.

Cash receipts mean the value of commodity marketings during the calendar year, irrespective of the year of production, as calculated by the Economic Research Service of the USDA.

Certification of eligibility means the date on which the Administrator (FAS) announces in the FEDERAL REGISTER or by Department news release, whichever comes first, a certification of eligibility to apply for trade adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

County price maintained by the Secretary means a daily price obtained from a USDA agency for the commodity and producer location, except that weekly or monthly prices may be used if daily prices are unavailable.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA).

Family member means an individual to whom a producer is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Children, including legally adopted children;

(5) Grandchildren;

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Filing period means the dates during which petitions may be submitted, as published in the FEDERAL REGISTER.

FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Group means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year designated by the Administrator (FAS) with respect to an agricultural commodity. In the case of an agricultural commodity that does not have a designated marketing year, a calendar year will be used.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture, or

the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, when available, or when unavailable, as determined by the Administrator (FAS).

NIFA means the National Institute of Food and Agriculture, the Federal agency within the U.S. Department of Agriculture which administers the Federal agricultural extension programs.

Producer means a person who shares in the risk of producing an agricultural commodity and is entitled to a share of the commodity for marketing; including an operator, a sharecropper, or a person who owns or rents the land on which the commodity is produced; or a person who reports gain or loss from the trade or business of fishing on the person's annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed.

Raw or *natural state* means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching, irradiating, or fumigating.

State Cooperative Extension Service means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341–349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31–1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Value of production means the value of commodities produced during the crop year calculated as production times the marketing year average price. This may be equal to cash receipts when the crop year for the commodity runs from January through December.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of producers in the United States or its authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator (FAS), and submitted to FAS no later than the last day of the filing period announced in the FEDERAL REGISTER. Petitions received after this date will be returned to the sender.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and e-mail address (if available) of each producer in the group, or its authorized representative. The petition shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petition shall indicate if the group is filing on behalf of all producers in the United States, or if it is filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area.

(4) The beginning and ending dates for the marketing year upon which the petition is based. A petition may be filed for only the most recent full marketing year for which data are available for national average prices, or quantity of production, or value of production, or cash receipts.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Supporting information justifying the basis of the petition, including required data for the petitioned marketing year and the previous 3 marketing years.

(i) Whenever possible, the petitioners shall use national average data compiled by the National Agricultural Statistics Service (NASS) or the National Marine Fisheries Service (NMFS), to determine national average prices, or quantity of production, or value of production, or cash receipts. If NASS or NMFS has not compiled such data for the commodity, the petitioners shall provide alternative data for the marketing year under review and for the

previous 3 marketing years, and identify the source of the data. In such cases the Administrator (FAS) shall determine if the alternative data is acceptable.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide the national average prices or county prices if applicable, or quantity of production or value of production, or cash receipts for the petitioned commodity in the impacted area for the marketing year under review and for the previous 3 marketing years, and identification of the data source.

(iii) The Administrator (FAS) may request petitioners to provide records to support their data.

(d) Once the petition is received, the Administrator (FAS) shall determine if it meets the requirements of §1580.201(c) of this part, and if so, publish notice in the FEDERAL REGISTER that a petition has been filed and that an investigation is being initiated. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the data being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioner. If the petition does not meet the requirements of §1580.201(c) of this part, the Administrator (FAS) shall notify as soon as practicable the contact person or the authorized representative for the group of the deficiencies.

§1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person found by the Administrator (FAS) to have a substantial interest in the proceedings, submits not later than 10 days after the date of publication of notice in the FEDERAL REGISTER under §1580.201(d) of this part, a request in writing for a hearing, the Administrator (FAS) shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner or any other person having an interest in the proceedings takes issue with any of the information published in the FEDERAL REGISTER concerning the petition, such person may submit to the Administrator (FAS) their comments in writing or electronically for consideration by the Administrator (FAS) not later than 10 days after the date of publication of notice in the FEDERAL REGISTER under §1580.201(d) of this part.

(c) A producer or group of producers that resides outside of the State or region identified in the petition filed under paragraph (a) of this section, may file a request to become a party to that petition not later than 15 days after the date that the notice is published in the FEDERAL REGISTER under §1580.201(d) of this part. The Administrator (FAS) may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator (FAS) shall publish in the FEDERAL REGISTER as soon as practicable any changes to the original notice resulting from any actions taken under this section.

§1580.203 Determination of eligibility and certification by the Administrator (FAS).

(a) As soon as practicable after the petition has been filed, but in any event not later than 40 days after that date, the Administrator (FAS) shall certify a group of producers as eligible to apply for adjustment assistance under this chapter if the Administrator (FAS) determines:

(1) At least one of the following:

(i) The national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year; or

(ii) The quantity of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iii) The value of production of the agricultural commodity produced by

the group during such marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iv) The cash receipts for the agricultural commodity produced by the group during such marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

(2) The volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year; and

(3) The increase in such imports contributed importantly to the decrease in the national average price, or quantity of production, or value of production, or cash receipts for, the agricultural commodity.

(b) In any case in which there are separate classes of goods within an agricultural commodity, the Administrator (FAS) shall treat each class as a separate commodity in determining:

(1) Group eligibility;

(2) The national average price, or quantity of production, or value of production, or cash receipts; and

(3) The volume of imports.

(c) Upon making a determination, whether affirmative or negative, the Administrator (FAS) shall promptly publish in the FEDERAL REGISTER a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator (FAS) shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, Web site notices on the Internet, use of broadcast print media, and transmittal through local USDA offices.

(e) Whenever a group of agricultural producers is certified as eligible to apply for assistance, the Administrator (FAS) shall notify NIFA, the Agricultural Marketing Service, and FSA who will assist in informing other producers about the TAA for Farmers program and how they may apply for trade adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility under § 1580.203 of this title, may apply for adjustment assistance.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide sufficient documentation to establish that:

(1) The producer produced the agricultural commodity in the marketing year for which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;

(2) There has been a decrease in the quantity of the agricultural commodity produced by the producer in the marketing year for which the petition is certified from the most recent prior marketing year preceding that marketing year for which data is available; or

(3) There has been a decrease in the price of the agricultural commodity based on:

(i) The price received for the agricultural commodity by the producer during the marketing year with respect to which the petition is filed from the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

(ii) The effective posted county price maintained by the Secretary for the agricultural commodity on the date on which the Administrator (FAS) accepts a petition for consideration as published in the FEDERAL REGISTER from

the average effective posted county level price for the commodity in the 3 marketing years preceding that date. If USDA prices are not available, prices from verifiable sources, including universities, cooperatives, or local markets, may be used.

(4) If a petition is certified with respect to a commodity not produced by the producer every year, the producer may establish the average price received by the producer for the commodity in the 3 marketing years preceding the year in which the petition is filed by using annual price data for the 3 most recent marketing years in which the producer produced the commodity.

(5) The producer must certify that the producer has not received cash benefits under the Trade Adjustment Assistance for Workers or Trade Adjustment Assistance for Firms programs; or TAA for Farmers benefits based on the production of an agricultural commodity covered by another TAA for Farmers petition.

(d) The producer must certify that:

(1) For petitions certified for 2008 crops, their compliance with person determinations set forth in part 1400 of this title, subpart B and average adjusted gross income limitation requirements set forth in subpart G, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, their average gross nonfarm income and average adjusted gross farm income meet requirements set forth in part 1400 of this title, subpart F, and payment limitation requirements set forth in part 1400 of this title, subparts A and B, effective December 29, 2008; and,

(e) The total amount of payments made to a producer for which the application was approved may not exceed the limitations on payments applicable to:

(1) For petitions certified for 2008 crops, counter-cyclical payments, set forth in part 1400 of this title, subpart A, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, the counter-cyclical payments, including the Average Crop Revenue Election (ACRE) set forth in part 1400 of this title, subparts A and B, effective December 29, 2008; and

(f) If requested by FSA, a producer must provide documentation regarding average adjusted gross income and payment limitations.

§ 1580.302 Technical assistance and services.

(a) *Initial Technical Assistance:* A producer covered by a certification who has been determined by FSA to meet the requirements of §1580.301 of this part, is eligible to receive Initial Technical Assistance through NIFA to be completed within 180 days of petition certification. Such assistance shall include information regarding:

(1) Improving the yield and marketing of that agricultural commodity, and

(2) The feasibility and desirability, of substituting one or more agricultural commodities for that agricultural commodity.

(b) *Intensive Technical Assistance:* Upon completion of Initial Technical Assistance, a producer is eligible to participate in Intensive Technical Assistance. Intensive Technical Assistance shall consist of:

(1) A series of courses to further assist the producer in improving the competitiveness of producing the agricultural commodity certified under §1580.203 of this part, or another agricultural commodity, and

(2) Assistance in developing an initial business plan based on the courses completed under paragraph (a) of this section.

(c) *During Intensive Technical Assistance:* NIFA shall deliver and the producer shall be required to attend a series of Intensive Technical Assistance workshops relevant to the circumstances of the producer.

(d) *Initial Business Plan:* Upon completion of the Initial and Intensive Technical Assistance, the producer shall be required to develop an Initial Business Plan recommended by NIFA and approved by the Administrator (FAS) before receiving an adjustment assistance payment. The Initial Business Plan will:

(1) Reflect the skills gained by the producer through the courses described in paragraph (c) of this section; and

(2) Demonstrate how the producer will apply those skills to the circumstances of the producer.

(e) Upon approval of the Initial Business Plan, the producer will receive an amount not to exceed $4,000 to implement the Initial Business Plan or develop a Long-Term Business Adjustment Plan.

(f) A producer who completes the Intensive Technical Assistance and whose Initial Business Plan has been approved shall be eligible, in addition to the amount under paragraph (e) of this section, for assistance in developing a Long-Term Business Adjustment Plan.

(g) *Long-Term Business Adjustment Plan:* The Long-Term Business Adjustment Plan shall:

(1) Include steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

(2) Take into consideration the interests of the workers employed by the producer; and

(3) Demonstrate that the producer will have sufficient resources to implement the business plan.

(h) Upon recommendation by NIFA and approval of the producer's Long-Term Business Adjustment Plan by the Administrator (FAS), the producer shall be entitled to receive an amount not to exceed $8,000 to implement their Long-Term Business Adjustment Plan.

(i) The Initial Business Plan and Long-Term Business Adjustment Plan must be completed and approved within 36 months after a petition is certified.

(j) A producer shall not receive a combined total of more than $12,000 for the Initial Business Plan and the Long Term Business Adjustment Plan in the 36-month period following petition certification.

(k) The Administrator (FAS) may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by a producer in connection with the initial technical assistance, if such initial technical assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer. NIFA and FSA will work with the producer and the Administrator (FAS) to facilitate application for and proper payment of reasonable allowable supplemental expenses. The Administrator (FAS) will not authorize payments to a producer:

(1) For subsistence expenses that exceed the lesser of:

(i) The actual per diem expenses for subsistence incurred by a producer; or

(ii) The prevailing per diem allowance rate authorized under Federal travel regulations; or

(2) For travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

§ 1580.303 Adjustment assistance payments.

(a) If the Administrator (FAS) determines that insufficient appropriated fiscal year funds are available to provide maximum cash benefits to all eligible applicants, after having deducted estimated transportation and substance payments and administrative and technical assistance costs, the Administrator (FAS) shall prorate cash payments to producers for the approved initial and long-term business plans.

(b) Any producer who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(c) In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits in accordance with this part, such producer or producers specified in 7 CFR part 707 may receive such benefits.

§ 1580.401 Subsequent year petition re-certification.

(a) Prior to the anniversary of the petition certification date:

(1) Groups or authorized representatives that provided the data to justify their initial petition shall provide the Administrator (FAS) data for the most recent marketing year, and

(2) The Administrator (FAS) shall make a determination with respect to the re-certification of petitions for the subsequent year by applying criteria as set forth in § 1580.203 of this part for the most recent marketing year.

(b) The Administrator (FAS) will promptly publish in the FEDERAL REGISTER the determination with the reasons for the determination.

(c) If a petition is re-certified, only eligible producers who did not receive training and cash benefits under this program may apply.

§ 1580.501 Administration.

(a) The petition process will be administered by FAS. FAS will publish in the FEDERAL REGISTER the filing dates for commodity groups to file petitions.

(b) FSA will administer the producer application and payment process.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The technical assistance process and the recommendation for approval of all producer business plans will be under the general supervision of NIFA. NIFA may award the technical assistance and services to a state cooperative extension service.

(e) The Deputy Administrator may, in consultation with the Administrator, FAS, authorize the State and County committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such other requirements by applicants does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits, and compliance.

(a) Producers making application 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. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of the U.S. Department of Agriculture or any agency thereof, the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(d) If requested in writing by the U.S. Department of Agriculture or any agency thereof, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in §1580.301(c) of this part, within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this part's requirements, will result in ineligibility for all program benefits subject to this part for the year or years subject to the request.

§ 1580.503 Recovery of overpayments.

(a) If the Administrator (FAS) determines that any producer has received any payment under this program to which the producer was not entitled, or has expended funds received under this program for purpose that was not approved by the Administrator (FAS) such producer will be liable to repay such amount. The Administrator (FAS) may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the producer; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a) of this section, the Administrator (FAS), shall recover the overpayment as a debt following the procedures in 7 CFR part 3. The requirement for demand and notice and opportunity for a hearing under the debt collection procedures in 7 CFR part 3 shall satisfy the notice and hearing requirements under 19 U.S.C. 2401f(c), and the appeal procedures in §1580.505 of this part shall not apply to collection of overpayments

§1580.504 Debarment, suspension, and penalties.

(a) *Generally*. The regulations governing nonprocurement debarment and suspension, 2 CFR part 417, and requirements for drug-free workplace (financial assistance), 2 CFR part 421, apply to this part.

(b) *Additional specific suspension and debarment provision for this program*. In addition to any other debarment or suspension of a producer under paragraph (a) of this section, in connection with this program, if the Administrator (FAS) or a court of competent jurisdiction, determines that a producer:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and, as a result of such false statement or representation, or of such nondisclosure, such producer has received any payment under this program to which the producer was not entitled, the Administrator (FAS) shall suspend and debar such producer from any future payments under this program, as provided in 19 U.S.C. 2401f(b).

(c) *Criminal penalty*. Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other producer any payments authorized to be furnished under this program shall be fined not more that $10,000 or imprisoned for not more than 1 year, or both.

[75 FR 9089, Mar. 1, 2010, as amended at 85 FR 31938, May 28, 2020]

§1580.505 Appeals.

(a) A producer adversely affected by a determination with respect to their application for trade adjustment assistance under §1580.301 of this part or with respect to the receipt of technical assistance or payments under §1580.302 of this part may file a notice of appeal within 30 days of the date that the notification of the adverse determination was sent.

(b) A producer may not seek judicial review of any adverse decision under this paragraph without receiving a final determination pursuant to this paragraph.

§1580.506 Judicial review.

Any producer aggrieved by a final agency determination under this part may appeal to the U.S. Court of International Trade for a review of such determination in accordance with its rules and procedures.

§1580.602 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551–0040.

PART 1590—UNITED STATES DEPARTMENT OF AGRICULTURE LOCAL AND REGIONAL FOOD AID PROCUREMENT PROGRAM

Sec.

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AUTHORITY: 7 U.S.C. 1726c.

SOURCE: 81 FR 43009, July 1, 2016, unless otherwise noted.

§ 1590.1 Purpose and applicability.

(a)(1) This part sets forth the general terms and conditions governing the award of funds by the Foreign Agricultural Service (FAS) to recipients under the U.S. Department of Agriculture (USDA) Local and Regional Food Aid Procurement Program (USDA LRP Program). Under the USDA LRP Program, recipients use FAS-provided funds to purchase eligible commodities in developing countries and pay for associated administrative and operational costs related to the implementation of field-based projects in a foreign country pursuant to an agreement with FAS.

(2) Funds provided by FAS under the USDA LRP Program may be used to provide food assistance in the form of development assistance, an emergency response, or both through a field-based project. Field-based projects intended to provide development assistance will be implemented for a period of not less than one year. Food assistance may be provided under the USDA LRP Program through local and regional procurement, food vouchers, and cash transfers.

(3) FAS will consult with the United States Agency for International Development in the development and implementation of field-based projects that will provide food assistance in the form of an emergency response.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In 2 CFR 400.1, USDA adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and by this part, applies to the USDA LRP Program, except as provided in paragraph (e) of this section.

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the USDA LRP Program.

(d) In accordance with 7 U.S.C. 1726c(a)(4), assistance under the USDA LRP Program may be provided to a private voluntary organization or a cooperative that is, to the extent practicable, registered with the Administrator of the U.S. Agency for International Development or to an intergovernmental organization, such as the World Food Program.

(e)(1) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all awards by FAS under the USDA LRP Program to all recipients that are private voluntary organizations or cooperatives, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47, and a cooperative that is a for-profit entity or a foreign organization. Subpart F of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and this part, apply only to awards by FAS to recipients that are private voluntary organizations or non-profit cooperatives but that are not foreign organizations. The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by FAS under the USDA LRP Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.46, and, therefore, they do not apply to an intergovernmental organization.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, and the corresponding provisions of 2 CFR part 400 and of this part, apply to all subawards to all subrecipients under this part, except in cases:

(i) Where the subrecipient is a foreign public entity; or

(ii) Where FAS determines that the application of these provisions to a subaward to a subrecipient that is a foreign organization would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

§ 1590.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or part 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between FAS and a recipient to implement a field-based project under the USDA LRP Program.

Codex Alimentarius means the program of the United Nations Food and Agriculture Organization and the World Health Organization that was created to develop food standards, guidelines, and related texts, such as codes of practice to protect the health of consumers, ensure fair trade practices in the food trade, and promote the coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out the project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Country of origin means the country in which the procured commodities were produced.

Developing country means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

Development assistance means an activity or activities that will enhance the availability of, access to, or the utilization of adequate food to meet the caloric and nutritional needs of populations suffering from chronic food insecurity, or enhance the ability of such populations to build assets to protect against chronic food insecurity.

Disaster means an event or a series of events that creates a need for emergency food assistance by threatening or resulting in significantly decreased availability of, or access to, food or the erosion of the ability of populations to meet food needs. Disasters include, but are not limited to, natural events such as floods, earthquakes, and drought; crop failure; disease; civil strife and war; and economic turmoil. Disasters can be characterized as slow or rapid-onset. The situation caused by a disaster is a ''food crisis.''

Disburse means to make a payment to liquidate an obligation.

Eligible commodity means an agricultural commodity, or the product of an agricultural commodity, that is produced in and procured from a developing country, and that meets each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture, as well as any other criteria specified in section § 1590.6(b).

Emergency response means an activity that is designed to meet the urgent food and nutritional needs of those affected by acute or transitory food insecurity as a result of a disaster.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses for the

purchase, ocean and overland transportation, and storage and handling of the procured commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and operational costs related to the implementation of the field-based project under the agreement.

Field-based project or project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement. It can either stand alone or be an add-on component to another program that provides other forms of assistance to the food insecure.

Food assistance means assistance that is provided to members of a targeted vulnerable group to meet their food needs.

Local procurement means the procurement of food by a recipient, directly or through a subrecipient, in the target country to assist beneficiaries within that same country. The use of food vouchers to obtain food under an agreement is a form of local procurement.

Overland transportation means any transportation other than ocean transportation. It includes internal transportation within the target country and regional transportation within the target region.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Procured commodities means the eligible commodities that are procured by a recipient, directly or through a subrecipient, under an agreement.

Program Income means funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include FAS-provided funds or interest earned on such funds; or funds provided for cost sharing or matching contributions, refunds or rebates, credits, discounts, or interest earned on any of them.

Purchase country means a developing country in which the procured commodities are purchased.

Recipient means an entity that enters into an agreement with FAS and receives FAS-provided funds to carry out activities under the agreement. The term recipient does not include a subrecipient.

Regional procurement means the procurement of food by a recipient, directly or through a subrecipient, in a developing country that is located on the same continent as the target country. Regional procurement does not include the purchase of food in the target country.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the developing country in which activities are implemented under an agreement.

Target region means the continent on which the target country is located or nearby.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant in its proposal, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

§ 1590.3 Eligibility and conflicts of interest.

(a)(1) A private voluntary organization or a cooperative is eligible to submit an application under this part to become a recipient under the USDA LRP Program if it is either registered with the Administrator of the U.S. Agency for International Development or FAS has determined that such registration is impracticable. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government Web site for grant opportunities.

(2) FAS may give preference for funding to eligible entities that have, or are working toward, projects under the McGovern-Dole International Food for Education and Child Nutrition Program established under section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(b) Applicants, recipients, and subrecipients must comply with policies established by FAS pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

§ 1590.4 Application process.

(a) An applicant seeking to enter into an agreement with FAS must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the USDA LRP Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section and any other items required by the notice of funding opportunity and must be submitted electronically to FAS at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction and impact analysis, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a budget narrative that indicate:

(i) The amount(s) of any FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Commodity procurement costs, including costs for locally and regionally procured commodities, and food vouchers;

(C) Transportation, storage, and handling costs; and

(D) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the USDA LRP Program-level results framework;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, interim evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Each applicant (unless the applicant has an exception approved by FAS under 2 CFR 25.110(d)) is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

§ 1590.5 Agreements.

(a) After FAS approves a proposal by an applicant, FAS will negotiate an agreement with the applicant. The agreement will set forth the obligations of FAS and the recipient.

(b) The agreement will specify the general information required in 2 CFR 200.210(a), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.210(b), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b) and (c) of this section, the agreement will also include the following:

(1) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The method(s) and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-FAS sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting a subrecipient that has not yet been identified;

(vii) Any other governmental or nongovernmental entities that will be involved in the implementation of the activities; and

(viii) Any additional items specified by FAS during the negotiation of the agreement;

(2) Requirements relating to the procurement of the eligible commodities, as set forth in § 1590.6;

(3) A budget, which will set forth the maximum amounts of FAS-provided funds, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item; and

(4) Performance goals for the agreement, including a list of results to be achieved by the activities and corresponding indicators, targets, and time frames.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following:

(1) The agreement will prohibit the use of the procured commodities, food vouchers, or cash transfers for any purpose other than food assistance;

(2) The agreement will prohibit the resale or transshipment of the procured commodities by the recipient to a country other than the target country specified in the agreement for so long as the recipient has title to such commodities;

(3) The recipient will assert that it has taken action to ensure that any eligible commodities that will be procured regionally will be imported free from all customs, duties, tolls, and taxes. The recipient must submit information to FAS to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, the eligible commodities can be procured locally or regionally without a disruptive impact on farmers located in, or the economy of, the target country or any country in the target region. The recipient will also assert that, to the best of its knowledge, the eligible commodities can be procured without unduly disrupting world prices for agricultural commodities or normal patterns of commercial trade with foreign countries. The recipient must submit information to FAS to support these assertions; and

(5) The recipient will assert that adequate transportation and storage facilities are available in the target country to prevent spoilage or waste of the eligible commodities. The recipient must submit information to FAS to support these assertions.

(f) FAS may enter into a multicountry agreement.

(g) FAS may provide funds under a multiyear agreement contingent upon the availability of funds.

§ 1590.6 Procurement of eligible commodities.

(a)(1) When using funds provided by FAS under the USDA LRP Program to make a local or regional procurement of food, including through the use of food vouchers, the recipient, or a subrecipient, must procure eligible commodities.

(2) The agreement will specify the types of eligible commodities approved for procurement; the approved purchase country(ies); and the approved method(s) of procurement (local procurement, regional procurement, food vouchers, or a combination of these methods). The agreement will prohibit the recipient from procuring eligible commodities from any country not specified in the agreement or utilizing methods of procurement that differ from those approved in the agreement.

(b) In carrying out an agreement, the recipient must comply with the following requirements, as applicable, relating to the procurement of eligible commodities under the agreement:

(1) The recipient must procure eligible commodities at a reasonable market price with respect to the economy of the purchase country, as determined by FAS.

(2) If the recipient procures eligible commodities that are grains, legumes, and pulses, the commodities must meet the food safety standards of the target country; provided, however, that if the target country does not have food safety standards for grains, legumes, and pulses, then the recipient must ensure that such commodities meet the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1–1969 Rev 4–2003, including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines*.

(3) If the recipient procures eligible commodities that are food products other than grains, legumes or pulses, such as processed foods, fortified blended foods, and enriched foods, the commodities must comply, in terms of raw materials, composition, or manufacture, unless otherwise specified in the agreement, with the Codex Alimentarius Recommended International Code of Practice: General Principles of Food Hygiene CAC/RCP 1–1969 Rev 4–2003 including Annex *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines*.

(4) If the recipient procures eligible commodities that are cereals, groundnuts, or tree nuts, or food products derived from or containing cereals, groundnuts, or tree nuts, the commodities must be tested for aflatoxin and have their moisture content certified. The maximum acceptable total aflatoxin level is 20 parts per billion, the U.S. Food and Drug Administration action level for aflatoxin in human foods.

(5) If the recipient procures an unprocessed commodity, it must ensure that the commodity has been produced either in the target country or in another developing country within the target region.

(6) If the recipient purchases a processed commodity, it must ensure that the processing took place, and the primary ingredient has been produced, either in the target country or in another developing country within the target region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquids.

(7) If the recipient purchases eligible commodities through a competitive tender, the recipient must specify the minimally acceptable commodity specifications and food safety and quality assurance standards in the tender. Purchases that are made from commercial wholesalers in a local or regional market must meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(8) The recipient must enter into a contract that complies with this paragraph for every local or regional procurement of eligible commodities, other than through food vouchers, from a commodity vendor. The recipient must ensure that the contract between the recipient and the commodity vendor clearly specifies the country of origin and specific market(s) in which the procurement will take place, commodity safety and quality assurance standards, product specifications, price per metric ton, and delivery terms. Recipients will be required to make such

contracts available to FAS upon request.

(9) The recipient must enter into a contract with an established inspection service to survey and report on the safety, quality, and condition of all procured commodities, other than those procured through food vouchers, prior to their shipment and distribution. The recipient will be required to submit any survey reports or certificates issued by such inspection service to FAS upon request.

(10) The recipient must enter into a contract with each vendor expected to redeem food vouchers distributed under an agreement that specifies the conditions under which the vouchers will be redeemed for food. The recipient must ensure that beneficiaries use food vouchers to purchase eligible commodities that meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3) and (4) of this section.

(c) The agreement will require the recipient to submit a procurement plan for FAS's approval within the time period specified in the agreement. The procurement plan will include time periods, broken down by month, for commodity procurement, delivery, and distribution and, where applicable, the distribution of food vouchers. The agreement will require the recipient to comply with the procurement plan, as approved by FAS, and will prohibit the recipient from making any changes to the procurement plan without obtaining the prior written approval of FAS.

§ 1590.7 Payments.

(a) If the agreement authorizes the payment of FAS-provided funds, FAS will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of FAS-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, the recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by FAS to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by FAS and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain the balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) FAS will review all requests to roll over unexpended funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. FAS will consider factors such as the amount of funding that the recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) FAS will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and FAS or the Commodity Credit Corporation (CCC), is more than three months in arrears.

(6)(i) A recipient must return to FAS any funds advanced by FAS that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (a)(6)(ii) and

(iii) of this section will apply if the recipient submits a request to FAS before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and FAS approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from FAS, for the purposes of complying with the requirement in paragraph (a)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and FAS does not approve the rollover of some or all of the funds, such funds must be returned to FAS.

(iv) If the recipient must return funds to FAS in accordance with paragraph (a)(6) of this section, the recipient must return the funds on the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from FAS that it has denied the recipient's request to roll over the funds; provided, however, that FAS may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, the recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by FAS. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies, or FAS determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of FAS-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative purposes, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(b) If a recipient is required to pay funds to FAS in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

§ 1590.8 Transportation of procured commodities.

(a) The recipient must acquire all transportation of procured commodities under the USDA LRP Program. FAS will pay for the transportation, as provided for in the agreement, through an advance payment or reimbursement to the recipient.

(b) A recipient that acquires ocean transportation in accordance with paragraph (a) of this section must comply with the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(c) The recipient may only use the services of a transportation company that is legally operating in the target country or another country within the target region, and that would not have a conflict of interest in transporting the commodities.

(d) The recipient must declare in the transportation contract the point at which the ocean carrier or overland transportation company will take custody of the eligible commodities to be transported.

§ 1590.9 Entry, handling, and labeling of procured commodities and notification requirements.

(a) The recipient must make all necessary arrangements for receiving regionally procured commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all regionally procured commodities to be imported and distributed free from all customs duties, tolls, and taxes, unless otherwise specified in the agreement.

(b) The recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the procured commodities from the designated point and time where title to the commodities passes to the recipient.

(c) The recipient must store and maintain all of the procured commodities in good condition from the time of delivery at the port of entry or the point of receipt from the commodity vendor(s) until their distribution.

(d)(1) If a recipient arranges for the packaging or repackaging of the procured commodities, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the procured commodities;

(iii) Contains the name of the country of origin;

(iv) Includes a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture; and

(v) Includes a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(2) If a recipient distributes procured commodities that are prepackaged or not packaged, the recipient must display a sign at the distribution site that includes the name of the procured commodities, the country of origin, a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture, and a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(3) If a recipient distributes food vouchers or cash transfers, the recipient must display a sign at the distribution site that includes a statement indicating that the food vouchers or cash transfers are being furnished through a project funded by the United States Department of Agriculture. The recipient must ensure that all paper vouchers or receipts for electronic vouchers are printed with a statement indicating that the vouchers are being furnished through a project funded by the United States Department of Agriculture. The vouchers must also include a statement indicating that they must not be sold, bartered, or exchanged.

(e) The recipient must ensure that signs are displayed at all activity implementation and commodity, food voucher, or cash transfer distribution sites to inform beneficiaries that funding for the project was provided by the United States Department of Agriculture.

(f) The recipient must also ensure that all public communications in relation to the project, the activities, or the procured commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the United States Department of Agriculture.

(g) FAS may waive compliance with one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section if a recipient demonstrates to FAS that the requirement presents a safety or security risk in the target country. If a recipient determines that compliance with a labeling or notification requirement poses an imminent threat of destruction of property, injury, or loss of life, the recipient must submit a waiver request to FAS as soon as possible. The recipient will not have to comply with such requirement during the period prior to the issuance of a waiver determination by FAS. A recipient may submit a written request for a waiver at any time after the agreement has been signed.

(h) In exceptional circumstances, FAS may, on its own initiative, waive one or more of the labeling and notification requirements in paragraphs (d), (e) and (f) of this section for programmatic reasons.

§ 1590.10 Damage to or loss of procured commodities.

(a) The recipient will be responsible for the procured commodities following the transfer of title to the procured commodities from the commodity vendor(s) to the recipient. FAS may require the recipient to purchase transportation insurance against commodity loss or damage.

(b) A recipient must inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the procured commodities that occurs following the transfer of title to the procured commodities to the recipient. The recipient must take

all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the procured commodities that occurs after title has been transferred to the recipient.

(c) The recipient will be responsible for arranging for an independent cargo surveyor to inspect any procured commodities transported by ocean upon discharge from the vessel and to prepare a survey or outturn report. The report must show the quantity and condition of the procured commodities discharged from the vessel and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the vessel, unless FAS determines that failure to do so was justified under the circumstances. For procured commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(d) When procured commodities are transported overland, the recipient will ensure that overland transportation contracts include a requirement that a loading and offloading report be prepared and provided to the recipient. The report must show the quantity and condition of the procured commodities loaded on the overland conveyance, as well as the time and place that the loading and offloading occurred. The recipient must obtain a copy of the report from the overland transportation company within 45 days after the completion of the commodity delivery. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(e) If procured commodities are damaged or lost during the time that they are in the care of an ocean carrier or overland transportation company:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to FAS;

(2) The recipient must provide to FAS the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost procured commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations, and any other factors that may affect the accuracy of scale weights, and, if scales are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and

seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(e) If the recipient has title to the procured commodities, and procured commodities valued in excess of $5,000 are damaged at any time prior to their distribution under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged procured commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities. The recipient must inform FAS of the results of the inspection and indicate whether the damaged procured commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(f)(1) If the recipient has title to the procured commodities, the recipient must arrange for the recovery of that portion of the procured commodities designated as suitable for the use authorized in the agreement. The recipient must dispose of procured commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.*, animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the procured commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The recipient must arrange for all U.S. Government markings to be obliterated or removed before the procured commodities are transferred by sale or donation under paragraph (f)(1) of this section.

(g) A recipient may retain any proceeds generated by the disposal of the procured commodities in accordance with paragraph (f)(1) of this section and must use the retained proceeds for expenses related to the disposal of the procured commodities and for activities specified in the agreement.

(h) The recipient must notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (f) of this section, including the quantities, values, and dispositions of procured commodities determined to be unfit.

§ 1590.11 Claims for damage to or loss of procured commodities.

(a) The recipient will be responsible for claims arising out of damage to or loss of a quantity of the procured commodities after the transfer of title to the procured commodities from the commodity vendor(s) to the recipient.

(b) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be in excess of $20,000, the recipient must:

(1) Notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost procured commodities, and the value of the damage or loss;

(2) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(3) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(4) Provide to FAS copies of all documentation relating to the claim.

(c) If the recipient has title to procured commodities that have been damaged or lost, and the value of the damaged or lost procured commodities is estimated to be $20,000 or less, the recipient must notify FAS in accordance with the agreement and provide detailed information about the damage or loss in the next report required to be filed under § 1590.14(e).

(d)(1) The value of a claim for lost procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities.

(2) The value of a claim for damaged procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with §1590.10(f)(1).

(e) If FAS determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, FAS may require the recipient to assign its rights to pursue the claim to FAS. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of a claim will be considered by FAS during the review of proposals for subsequent food assistance awards.

(f)(1) The recipient may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended as provided for in the agreement or for other purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the procured commodities or a portion thereof, FAS will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

§1590.12 Use of procured commodities, FAS-provided funds, and program income.

(a) A recipient must use the procured commodities, FAS-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use procured commodities, FAS-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of FAS.

(c) A recipient must not permit the distribution, handling, or allocation of procured commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of procured commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(e) A recipient must not use FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(f) A recipient may sell the procured commodities only if the recipient is disposing of damaged procured commodities as specified in §1590.10.

(g) A recipient must deposit and maintain all FAS-provided funds and program income in a bank account until they are used for a purpose authorized under the agreement or the FAS-provided funds are returned to FAS in accordance with §1590.7(a)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that this requirement would constitute an undue burden. The recipient must comply with the requirements in §1590.7(a)(7) with regard to the deposit of advance payments by FAS.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed ten percent of the Grand Total Costs, excluding any voluntary committed cost sharing or matching contributions, in the agreement budget. Adjustments beyond these limits require the prior approval of FAS.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.75, to other categories of expense without the prior approval of FAS.

(i) A recipient may use FAS-provided funds or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, the recipient must not use FAS-provided funds or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use FAS-provided funds or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of procured commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the procured commodities are stored in it. If the use of FAS-provided funds or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the FAS-provided funds or program income for this purpose until it receives written approval from FAS.

(j) The recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, the recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) As provided for in the agreement, the recipient must enter into a written contract with each provider of goods, services, or construction work that is valued in excess of the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient. The recipient must submit a copy of the signed contracts to FAS upon request.

§ 1590.13 Monitoring and evaluation requirements.

(a) The recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) The recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) The recipient must inform FAS, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from FAS to resolve the situation.

(d) The recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to FAS as part of its application, pursuant to §1590.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3) Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, the recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition.

(2) The recipient must provide a written certification to FAS that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) FAS will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) The recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain separate budgets for monitoring and evaluation, and separate budget line items for dedicated recipient monitoring and evaluation staff and independent third-party evaluation contracts.

(2) Personnel at the recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) FAS may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection with any evaluation conducted or commissioned by FAS. Such evaluations may be conducted by FAS internally or by an FAS-hired external evaluation contractor.

§ 1590.14 Reporting and recordkeeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.327 through 200.329.

(b) The recipient must submit financial reports to FAS in accordance with the schedule provided in the agreement. Such reports must provide an accurate accounting of FAS-provided funds, interest earned, program income, and voluntary committed cost sharing or matching contributions.

(c)(1) The recipient must submit performance reports to FAS, in the manner specified in the agreement. These reports must include the information required in 2 CFR 200.328(b)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report.

(2) The recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the recipient's performance data to determine whether it is accurate and reliable. A recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(d) Baseline, interim, and final evaluation reports are required for all agreements for development assistance projects, unless otherwise specified in the agreement. A rapid needs assessment and a final evaluation report are required for all agreements for emergency response projects, unless otherwise specified in the agreement. An interim evaluation report is not required for emergency response projects, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline provided in the FAS-approved evaluation plan. Evaluation reports submitted to FAS will be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must submit reports to FAS, using a form as prescribed by FAS, covering the receipt, handling, and disposition of the procured commodities and, if applicable, food vouchers and cash transfers. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the procured commodities and, if applicable, food vouchers and cash transfers have been distributed and such disposition has been reported to FAS.

(f) If requested by FAS, the recipient must provide to FAS additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.333 through 200.337. The date of submission of the final expenditure report, as referenced in 2 CFR 200.333, will be the final date of submission of the reports required by paragraph (e) of this section, as prescribed by FAS. The recipient must retain copies of and make available to FAS all sales receipts, contracts, or other documents related to the procurement of eligible commodities, as well as records of dispatch received from ocean carriers or overland transportation companies.

§ 1590.15 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive procured commodities, FAS-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.331. The recipient must provide a copy of each subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any procured commodities, FAS-provided funds, or program income to the subrecipient.

(b) The recipient must include the following requirements in the subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to subrecipients because they directly concern the implementation of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient is prohibited from using FAS-provided funds to acquire goods and services, either directly or indirectly through another party, in a manner that violates country-specific economic sanction programs, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any procured commodities, FAS-provided funds, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) In accordance with §1590.19 and 2 CFR 200.501(h), a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) The recipient must monitor the actions of a subrecipient as necessary to ensure that procured commodities, FAS-provided funds, and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

§1590.16 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and FAS determines that the noncompliance cannot be remedied by imposing additional conditions, FAS may take one or more of the actions set forth in 2 CFR 200.338, including initiating a claim as a remedy. FAS may also initiate a claim against a recipient if the procured commodities are damaged or lost, or the FAS-provided funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

§1590.17 Suspension and termination of agreements.

(a) An agreement or subagreement may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the procured commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the target country.

(b) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed procured commodities and must dispose of such commodities only as agreed to by FAS; and

(2) Must comply with the closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§1590.18 Opportunities to object and appeals.

(a) FAS will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by FAS pursuant to §1590.16. FAS will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. In the absence of such other requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the FAS official specified in the agreement within 30 days after the date that FAS notified the recipient that FAS was taking the action being challenged. This official will endeavor to notify the recipient of his or her determination within 60 days after the date that FAS received the recipient's written objection.

(c) The recipient may appeal the determination of the official to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30

days after the date of the initial determination by the FAS official. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that FAS received the appeal. The determination of the Administrator will be the final determination of FAS. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

§ 1590.19 Audit requirements.

(a) Subpart F, Audit requirements, of 2 CFR part 200 applies to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy this requirement:

(1)(i) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020–000–00–265–4) of the agreement or subagreement, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under only one FAS program; or

(ii) A financial related audit of all Federal awards from FAS, in accordance with Government Auditing Standards, if the recipient or subrecipient receives Federal awards under multiple FAS programs; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards from FAS, is exempt from requirements for a non-Federal audit for that year, except as provided in paragraph (d) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or the U.S. Government Accountability Office may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

PART 1599—McGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM

Sec.

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AUTHORITY: 7 U.S.C. 1736o–1.

SOURCE: 84 FR 64973, Nov. 26, 2019, unless otherwise noted.

§ 1599.1 Purpose and applicability.

(a) This part sets forth the general terms and conditions governing the award of donated commodities and funds by the Foreign Agricultural Service (FAS) to recipients under the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program). Under the McGovern-Dole Program, recipients use the donated commodities, proceeds from any sale of such commodities, FAS-provided funds, and program income to implement a project in a foreign country pursuant to an agreement with FAS. When authorized by an agreement, a recipient may use FAS-provided funds to make a local or regional procurement of qualified commodities to implement such a project.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the United States Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the McGovern-Dole Program, except as provided in paragraphs (e), (f), and (g) of this section.

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the McGovern-Dole Program.

(d) In accordance with 7 U.S.C. 1736o–1(e), assistance under the McGovern-Dole Program may be provided to private voluntary organizations, cooperatives, intergovernmental organizations, governments of developing countries and their agencies, and other organizations.

(e) The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by FAS under the McGovern-Dole Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.46, and, therefore, they do not apply to a foreign government or its agency or an intergovernmental organization.

(f)(1) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all awards by FAS under the McGovern-Dole Program to all recipients that are private voluntary organizations, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47; cooperatives, including a cooperative that is a for-profit entity or a foreign organization; or other organizations, including organizations that are for-profit entities or foreign organizations, but not including intergovernmental organizations.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all subawards to all subrecipients under this part, except in cases:

(i) Where the subrecipient is a foreign public entity; or

(ii) Where FAS determines that the application of the provisions in this part to a subaward to a subrecipient that is a foreign organization would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

(g)(1) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies

only to awards by FAS to recipients that are private voluntary organizations, cooperatives, or other organizations, but that are not for-profit entities or foreign organizations.

(2) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to subawards to subrecipients under this part, except where the subrecipient is a for-profit entity, foreign public entity, or foreign organization.

(3) Audit requirements for recipients and subrecipients that are for-profit entities or foreign organizations are set forth in §1599.19.

§1599.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between FAS and a recipient to implement a project under the McGovern-Dole Program.

Commodities means agricultural commodities, or products of agricultural commodities, that:

(1) Are produced in the United States; or

(2)(i) Are produced in and procured from:

(A) A developing country that is a target country; or

(B) A developing country in the target region; and

(ii) At a minimum, meet each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out a project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Country of origin means the country in which procured commodities were produced.

Developing country means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

Disburse means to make a payment to liquidate an obligation.

Donated commodities means the commodities produced in the United States that are donated by FAS to a recipient under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses authorized in the agreement, such as expenses for the purchase of qualified commodities; any ocean transportation of the procured commodities; overland transportation, storage, and handling of the donated commodities or procured commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and the costs of activities conducted in the target country that would enhance the effectiveness of the activities implemented under the McGovern-Dole Program.

Food assistance means assistance that is provided to members of a targeted vulnerable group to meet their food needs.

Local procurement means the procurement of qualified commodities by a recipient, directly or through a subrecipient, in the target country to assist beneficiaries within that same country.

McGovern-Dole Program means the McGovern-Dole International Food for Education and Child Nutrition Program.

Overland transportation means any transportation other than ocean transportation. It includes internal transportation within the target country and regional transportation within the target region.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Procured commodities means the qualified commodities that are procured by a recipient, directly or through a subrecipient, under an agreement.

Program income means interest earned on proceeds from the sale of donated commodities, as well as funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include proceeds from; FAS-provided funds or interest earned on such funds; or funds provided for cost sharing or matching contributions, refunds or rebates, credits, discounts, or interest earned on any of them.

Project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement.

Purchase country means a developing country in which procured commodities are purchased.

Qualified commodities means commodities that are produced in a developing country that is the target country or in the target region under an agreement, and that meet each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture, as well as any other criteria specified in §1599.6(b).

Recipient means an entity that enters into an agreement with FAS and receives donated commodities, FAS-provided funds, or both to carry out activities under the agreement. The term recipient does not include a subrecipient.

Regional procurement means the procurement of qualified commodities by a recipient, directly or through a subrecipient, in a developing country in the target region, other than the target country, to assist beneficiaries within the target country.

Sale proceeds means funds received by a recipient from the sale of donated commodities.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the foreign country in which activities are implemented under an agreement.

Target region means the continent on which the target country is located.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant or recipient, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

§1599.3 Eligibility and conflicts of interest.

(a) A private voluntary organization, a cooperative, or another organization

that is not an intergovernmental organization is eligible to submit an application under this part to become a recipient under the McGovern-Dole Program. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government website for grant opportunities.

(b) Applicants, recipients, and subrecipients must comply with policies established by FAS pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

§ 1599.4 Application process.

(a) An applicant seeking to enter into an agreement with FAS must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the McGovern-Dole Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section and any other items required by the notice of funding opportunity and must be submitted electronically to FAS at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction and a strategic analysis, which includes an impact analysis, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a budget narrative that indicate:

(i) The amounts of any sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Commodity procurement costs, where applicable, for qualified commodities obtained through local or regional procurement;

(C) Overland transportation, storage, and handling costs; and

(D) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the McGovern-Dole Program-level results framework, as set forth in the notice of funding opportunity;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, interim evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Each applicant (unless the applicant has an exception approved by FAS under 2 CFR 25.110(d)) is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

§ 1599.5 Agreements.

(a) After FAS approves an application by an applicant, FAS will negotiate an agreement with the applicant. The agreement will set forth the obligations of FAS and the recipient.

(b) The agreement will specify the general information required in 2 CFR 200.210(a), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.210(b), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b)

and (c) of this section, the agreement will also include the following:

(1) The kind, quantity, and use of the donated commodities and an estimated commodity call forward schedule, with the month and year indicated for each expected commodity shipment;

(2) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The methods and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-FAS sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting a subrecipient that has not yet been identified;

(vii) Any other governmental or non-governmental entities that will be involved in the implementation of the activities; and

(viii) Any processing, packaging, or repackaging of the donated commodities or procured commodities that will take place prior to the distribution, sale, or barter of the donated commodities, or the distribution of the procured commodities, by the recipient;

(3) A budget, which will set forth the maximum amounts of sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item, as well as other applicable budget requirements;

(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities and corresponding indicators, targets, and time frames;

(5) Requirements relating to any local or regional procurement of qualified commodities authorized in the agreement, as set forth in §1599.6; and

(6) Any additional provisions specified by FAS during the negotiation of the agreement.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following:

(1) The agreement will prohibit the sale, resale, or transshipment of the donated commodities or procured commodities by the recipient to a country not specified in the agreement, or the use of the donated commodities for other than domestic purposes, for as long as the recipient has title to such donated commodities or procured commodities;

(2) The agreement will prohibit the use of procured commodities, if applicable, for any purpose other than food assistance;

(3) The recipient will assert that it has taken action to ensure that any donated commodities that will be distributed to beneficiaries, and any qualified commodities that will be obtained through regional procurement, will be imported free from all customs, duties, tolls, and taxes; and all donated commodities and procured commodities will be distributed free from all customs, duties, tolls, and taxes. The recipient must submit information to FAS to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, the importation, if applicable, and distribution of the donated commodities or procured commodities in the target country will not result in a substantial disincentive to or interference with domestic production or marketing in that country. The recipient must submit information to FAS to support this assertion;

(5) The recipient will assert that, to the best of its knowledge, any sale or barter of the donated commodities will not displace or interfere with any sales of United States commodities that may otherwise be made to or within the target country. The recipient must submit information to FAS to support this assertion; and

(6) The recipient will assert that adequate transportation and storage facilities will be available in the target country at the time of the arrival of the donated commodities, or any procured commodities obtained through regional procurement, to prevent spoilage or waste of the donated commodities or procured commodities. The recipient must submit information to FAS to support this assertion.

(f) FAS may enter into a multi-country agreement in which donated commodities are delivered to one country and activities are carried out in another.

(g) FAS may provide donated commodities and FAS-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

§ 1599.6 Local and regional procurement of commodities.

(a)(1) An agreement may authorize a recipient to use FAS-provided funds to procure qualified commodities, through a local or regional procurement or both, to implement a project. The provisions of this section will apply in such a situation.

(2) The agreement will specify the types of qualified commodities approved for procurement; the approved purchase country(ies); and the approved method(s) of procurement (local procurement, regional procurement, or a combination of these methods). The agreement will prohibit the recipient from procuring qualified commodities from any country not specified in the agreement or utilizing methods of procurement that differ from those approved in the agreement.

(b) In carrying out an agreement, the recipient must comply with the following requirements, as applicable, relating to the procurement of qualified commodities under the agreement:

(1) The recipient must procure qualified commodities at a reasonable market price with respect to the economy of the purchase country, as determined by FAS.

(2) If the recipient procures qualified commodities that are grains, legumes, or pulses, the commodities must meet the food safety standards of the target country; provided, however, that if the target country does not have food safety standards for grains, legumes, or pulses, as applicable, then the recipient must ensure that such commodities meet the food safety standards specified in the agreement.

(3) If the recipient procures qualified commodities that are food products other than grains, legumes or pulses, such as processed foods, fortified blended foods, and enriched foods, the commodities must comply, in terms of raw materials, composition, or manufacture, with the food safety standards specified in the agreement.

(4) If the recipient procures qualified commodities that are cereals, groundnuts, or tree nuts, or food products derived from or containing cereals, groundnuts, or tree nuts, the commodities must be tested for aflatoxin and have their moisture content certified. The maximum acceptable total aflatoxin level is 20 parts per billion, the U.S. Food and Drug Administration action level for aflatoxin in human foods.

(5) If the recipient procures an unprocessed commodity, it must ensure that the commodity has been produced either in the target country or in another developing country within the target region.

(6) If the recipient procures a processed commodity, it must ensure that the processing took place, and the primary ingredient has been produced, either in the target country or in another developing country within the target region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquids.

(7) If the recipient procures qualified commodities through a competitive tender, the recipient must specify the minimally acceptable commodity specifications and food safety and quality assurance standards in the tender. Purchases that are made from commercial wholesalers in a local or regional market must meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3), and (4) of this section.

(8) The recipient must enter into a contract that complies with this paragraph (b) for every local or regional procurement of qualified commodities

from a commodity vendor. The recipient must ensure that the contract between the recipient and the commodity vendor clearly specifies the country of origin and the specific market(s) in which the procurement will take place, commodity safety and quality assurance standards, product specifications, price per metric ton, and delivery terms. The recipient will be required to make such contract available to FAS upon request.

(9) The recipient must enter into a contract with an established inspection service to survey and report on the safety, quality, and condition of all procured commodities, prior to their shipment and distribution. The recipient will be required to submit any survey reports or certificates issued by such inspection service to FAS upon request.

(c) The agreement will require the recipient to submit a procurement plan for FAS's approval within the time period specified in the agreement. The procurement plan will include time periods, broken down by month, for commodity procurement, delivery, and distribution. The agreement will require the recipient to comply with the procurement plan, as approved by FAS, and will prohibit the recipient from making any changes to the procurement plan without obtaining the prior written approval of FAS.

§ 1599.7 Payments.

(a) If a recipient arranges for transportation in accordance with §1599.8(b)(2), FAS will, as specified in the agreement, pay the costs of such transportation to the ocean carrier or to the recipient. The recipient must, as specified in the agreement, submit to FAS, arrange to be submitted to FAS, or maintain on file and make available to FAS, the following documents:

(1) The original, or a true copy, of each on board bill of lading indicating the freight rate and signed by the originating ocean carrier;

(2) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate;

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness; and

(iii) A signed copy of the Certificate of Loading issued by the National Cargo Bureau or a similar qualified independent surveyor;

(3) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(4) A signed copy of the U.S. Food Aid Booking Note or charter party covering ocean transportation of the cargo;

(5) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances that could not have been reasonably anticipated or controlled (force majeure) have prevented the ocean carrier's arrival at the first port of discharge; and

(6) A request for payment of freight, survey costs other than at load port, and other expenses approved by FAS.

(b) If the agreement specifies that some or all of the documents listed in paragraph (a) of this section will be submitted to FAS, then FAS will not render payment for transportation services until it has received all of the specified documents.

(c) If a recipient arranges for transportation in accordance with §1599.8(b)(2), and the recipient uses a freight forwarder, the recipient must ensure that the freight forwarder is registered in the SAM and require the freight forwarder to submit the documents specified in paragraph (a) of this section. The recipient will ensure that the total commission or fees paid to intermediaries in the transportation procurement process will not exceed two and a half percent of the total transportation costs.

(d) In no case will FAS provide payment to a recipient for demurrage costs or pay demurrage to any other entity.

(e) If FAS has agreed to be responsible for the costs of transporting, storing, and distributing the donated commodities from the designated discharge port or point of entry, and if the recipient will bear or has borne any of these costs, in accordance with the agreement, FAS will either provide an advance payment or a reimbursement to the recipient in the amount of such costs, in the manner set forth in the agreement.

(f) If the agreement authorizes the payment of FAS-provided funds, FAS will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of FAS-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, a recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by FAS to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by FAS and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain a reasonable (minimal) balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) FAS will review all requests to roll over funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. FAS will consider factors such as the amount of funding that a recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) FAS will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and FAS or the Commodity Credit Corporation (CCC), is more than three months in arrears.

(6)(i) A recipient must return to FAS any funds advanced by FAS that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (f)(6)(ii) and (iii) of this section will apply if the recipient submits a request to FAS before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and FAS approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from FAS, for the purposes of complying with the requirement in paragraph (f)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and FAS does not approve the rollover of some or all of the funds, such funds must be returned to FAS.

(iv) If a recipient must return funds to FAS in accordance with paragraph (f)(6) of this section, the recipient must return the funds by the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from FAS that it has denied the recipient's request to roll over the funds; provided, however, that FAS may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by FAS. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that the requirement in this paragraph (f)(7) would constitute an undue burden. A recipient will not be

required to maintain a separate bank account for advance payments of FAS-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative expenses, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned during a Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(g) If a recipient is required to pay funds to FAS in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

§ 1599.8 Transportation of donated or procured commodities.

(a) Shipments of donated commodities and procured commodities requiring ocean transportation are subject to the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by FAS under the McGovern-Dole Program will be arranged for under a specific agreement in the manner determined by FAS. Such transportation will be arranged for by:

(1) FAS in accordance with the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1, the Agriculture Acquisition Regulation (AGAR) in 48 CFR chapter 4, and directives issued by the Director, Office of Procurement and Property Management, USDA; or

(2) The recipient, with payment by FAS, in the manner specified in the agreement.

(c) A recipient must arrange for all transportation of procured commodities. FAS will pay for the transportation, as provided for in the agreement, through an advance payment or reimbursement to the recipient.

(d) A recipient that is responsible for arranging for the transportation of donated commodities or procured commodities must declare in the transportation contract the point at which the ocean carrier or overland transportation company will take custody of the donated commodities or procured commodities to be transported.

(e) A recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities or procured commodities and that would not have a conflict of interest in transporting such donated commodities or procured commodities.

(f) A recipient that arranges for transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the recipient must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any McGovern-Dole Program agreement to which the recipient is a party; and

(2) Is not affiliated with the recipient and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the recipient.

§ 1599.9 Entry, handling, and labeling of donated or procured commodities and notification requirements.

(a) A recipient must make all necessary arrangements for receiving in the target country the donated commodities and any procured commodities obtained through regional procurement, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all donated commodities that will be distributed to beneficiaries, and all procured commodities, to be imported and distributed free from all customs duties, tolls, and taxes. A recipient is

encouraged to make similar arrangements, where possible, with the government of a country where donated commodities to be sold or bartered are delivered.

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities or procured commodities from the designated point and time where title to the donated commodities or procured commodities passes to the recipient.

(c)(1) A recipient must store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale, or barter.

(2) A recipient must store and maintain the procured commodities in good condition from the time of delivery at the port of entry or the point of receipt from the commodity vendor(s) until their distribution.

(d)(1) If a recipient arranges for the packaging or repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the United States Department of Agriculture; and

(iv) Includes a statement indicating that the donated commodities must not be sold, exchanged, or bartered.

(2) If a recipient arranges for the processing and repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the processed product;

(iii) Includes a statement indicating that the processed product was made with commodities furnished by the United States Department of Agriculture; and

(iv) Includes a statement indicating that the processed product must not be sold, exchanged, or bartered.

(3) If a recipient arranges for the packaging or repackaging of procured commodities, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the procured commodities;

(iii) Contains the name of the country of origin;

(iv) Includes a statement indicating that the procured commodities are furnished through a project funded by the United States Department of Agriculture; and

(v) Includes a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(4)(i) If a recipient distributes donated commodities that are not packaged, the recipient must display a sign at the distribution site that includes the name of the donated commodities, a statement indicating that the commodities are being furnished by the United States Department of Agriculture, and a statement indicating that the donated commodities must not be sold, bartered, or exchanged.

(ii) If a recipient distributes procured commodities that are prepackaged or not packaged, the recipient must display a sign at the distribution site that includes the name of the procured commodities, the country of origin, a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture, and a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(e) A recipient must ensure that signs are displayed at all activity implementation and commodity distribution sites to inform beneficiaries that funding for the project was provided by the United States Department of Agriculture.

(f) A recipient must also ensure that all public communications relating to the project, the activities, or the donated commodities or procured commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the United States Department of Agriculture.

(g) FAS may waive compliance with one or more of the labeling and notification requirements in paragraphs (d), (e), and (f) of this section if a recipient demonstrates to FAS that the requirement presents a safety or security risk in the target country. If a recipient determines that compliance with a labeling or notification requirement poses an imminent threat of destruction of property, injury, or loss of life, the recipient must submit a waiver request to FAS as soon as possible. The recipient will not have to comply with such requirement during the period prior to the issuance of a waiver determination by FAS. A recipient may submit a written request for a waiver at any time after the agreement has been signed.

(h) In exceptional circumstances, FAS may, on its own initiative, waive one or more of the labeling and notification requirements in paragraphs (d), (e), and (f) of this section for programmatic reasons.

§ 1599.10 Damage to or loss of donated or procured commodities.

(a)(1) FAS will be responsible for the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for the donated commodities following the transfer of title to the donated commodities to the recipient. The title will transfer as specified in the agreement.

(2) A recipient will be responsible for the procured commodities following the transfer of title to the procured commodities from the commodity vendor(s) to the recipient. FAS may require the recipient to purchase transportation insurance against commodity loss or damage.

(b) A recipient must inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities or procured commodities that occurs following the transfer of title to the donated commodities or procured commodities to the recipient. The recipient must take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the donated commodities or procured commodities that occurs after title has been transferred to the recipient.

(c) A recipient will be responsible for arranging for an independent cargo surveyor to inspect the donated commodities, and any procured commodities transported by ocean, upon discharge from the ocean carrier and to prepare a survey or outturn report. The report must show the quantity and condition of the donated commodities or procured commodities discharged from the ocean carrier and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the ocean carrier, unless FAS determines that failure to do so was justified under the circumstances. For donated commodities or procured commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(d) When procured commodities are transported overland, the recipient will ensure that the overland transportation contract includes a requirement that a loading and offloading report be prepared and provided to the recipient. The report must show the quantity and condition of the procured commodities loaded on the overland conveyance, as well as the time and place that the loading and offloading occurred. The recipient must obtain a copy of the report from the overland transportation company within 45 days after the completion of the commodity delivery. The recipient must make each such report available to FAS upon request, or in

the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(e) If donated commodities or procured commodities are damaged or lost during the time that they are in the care of the ocean carrier or overland transportation company:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to FAS;

(2) The recipient must provide to FAS the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost donated commodities or procured commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations, and any other factors that may affect the accuracy of scale weights, and, if scales are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or ocean carrier records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(f) If a recipient has title to the donated commodities or procured commodities, and commodities valued in excess of $5,000 are damaged at any time prior to their distribution or sale under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged donated commodities or procured commodities. The value of damaged donated commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS. The value of damaged procured commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities. The recipient must inform FAS of the results of the inspection and indicate whether the damaged donated commodities or procured commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(g)(1) If a recipient has title to the donated commodities or procured commodities, the recipient must arrange for the recovery of that portion of the donated commodities or procured commodities designated as fit for the use authorized in the agreement. The recipient must dispose of donated commodities or procured commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.,* animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the donated commodities or procured commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) A recipient must arrange for all U.S. Government markings to be obliterated or removed before the donated commodities or procured commodities are transferred by sale or donation under paragraph (g)(1) of this section.

(h) A recipient may retain any proceeds generated by the disposal of the donated commodities or procured commodities in accordance with paragraph (g)(1) of this section and must use the retained proceeds for expenses related to the disposal of the donated commodities or procured commodities and for activities specified in the agreement.

(i) A recipient must notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (g) of this section, including the quantities, values, and dispositions of donated commodities or procured commodities determined to be unfit.

§ 1599.11 Claims for damage to or loss of donated or procured commodities.

(a)(1) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities after the transfer of title to the donated commodities.

(2) The recipient will be responsible for claims arising out of damage to or loss of a quantity of the procured commodities after the transfer of title to the procured commodities from the commodity vendor(s) to the recipient.

(b) If a recipient has title to donated commodities or procured commodities that have been damaged or lost, and the value of the damaged or lost commodities is estimated to be in excess of $20,000, the recipient must:

(1) Notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost commodities, and the value of the damage or loss;

(2) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(3) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(4) Provide to FAS copies of all documentation relating to the claim.

(c) If a recipient has title to donated commodities or procured commodities that have been damaged or lost, and the value of the damaged or lost commodities is estimated to be $20,000 or less, the recipient must notify FAS in accordance with the agreement and provide detailed information about the damage or loss in the next report required to be filed under § 1599.14(f)(1) or (2).

(d)(1) The value of a claim for lost donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS. The value of a claim for lost procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities.

(2) The value of a claim for damaged donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS, less any funds generated if such commodities are sold in accordance with § 1599.10(g)(1). The value of a claim for damaged procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1599.10(g)(1).

(e) If FAS determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, FAS may require the recipient to assign its rights to initiate or pursue the claim to FAS. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of a claim will be considered by FAS during the review of applications for subsequent food assistance awards.

(f)(1) A recipient may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended in accordance with the agreement or for other purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the donated commodities or procured commodities or a portion thereof, FAS will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

§ 1599.12 Use of donated or procured commodities, sale proceeds, FAS-provided funds, and program income.

(a) A recipient must use the donated commodities or procured commodities, any sale proceeds, FAS-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use donated commodities or procured commodities, sale proceeds, FAS-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of FAS.

(c) A recipient must not permit the distribution, handling, or allocation of donated commodities or procured commodities on the basis of political affiliation, geographic location, or the ethnic, tribal, or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of donated commodities or procured commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(e) A recipient must not use sale proceeds, FAS-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

(f)(1) A recipient may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the recipient is disposing of damaged donated commodities as specified in § 1599.10(g). The recipient must sell donated commodities at a reasonable market price. The recipient must obtain approval of its proposed sale price from FAS before selling donated commodities. The recipient must use any sale proceeds, interest, program income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(2) A recipient may sell procured commodities only if the recipient is disposing of damaged procured commodities as specified in § 1599.10(g).

(g) A recipient must deposit and maintain all sale proceeds, FAS-provided funds, and program income in a bank account until they are used for a purpose authorized under the agreement or the FAS-provided funds are returned to FAS in accordance with § 1599.7(f)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that the requirement in this paragraph (g) would constitute an undue burden. The recipient must comply with the requirements in § 1599.7(f)(7) with regard to the deposit of advance payments by FAS.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed the amount

specified in the agreement. Adjustments beyond the limits in this paragraph (h) require the prior approval of FAS.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.75, to other categories of expense without the prior approval of FAS.

(i) A recipient may use sale proceeds, FAS-provided funds, or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, a recipient must not use sale proceeds, FAS-provided funds, or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use sale proceeds, FAS-provided funds, or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities or procured commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities or procured commodities are stored in it. If the use of sale proceeds, FAS-provided funds, or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the sale proceeds, FAS-provided funds, or program income for this purpose until it receives written approval from FAS.

(j) A recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, a recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) A recipient must enter into a written contract with each provider of goods, services, or construction work that is valued at or above the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient and to comply with any other applicable requirements that may be specified by FAS in the agreement. The recipient must submit a copy of each signed contract to FAS, as specified in the agreement.

§ 1599.13 Monitoring and evaluation requirements.

(a) A recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) A recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) A recipient must inform FAS, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from FAS to resolve the situation.

(d) A recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to FAS as part of its application, pursuant to §1599.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3) Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, a recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural, and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition, provided that FAS may determine that, for a particular agreement, the staff of the independent third party evaluator is not required to have specialized experience in conducting evaluations of programs involving one or more of these four areas.

(2) A recipient must provide a written certification to FAS that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) FAS will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) A recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain a separate budget for monitoring and evaluation, with separate budget line items for dedicated recipient monitoring and evaluation staff and independent third party evaluation contracts.

(2) Personnel at the recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) FAS may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection, with any evaluation conducted or commissioned by FAS. Such evaluations may be conducted by FAS internally or by an FAS-hired external evaluation contractor.

§ 1599.14 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.327 through 200.329.

(b) A recipient must submit financial reports to FAS, by the dates and for the reporting periods specified in the agreement. Such reports must provide an accurate accounting of sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions.

(c)(1) A recipient must submit performance reports to FAS, by the dates and for the reporting periods specified in the agreement. These reports must

include the information required in 2 CFR 200.328(b)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report.

(2) A recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the recipient's performance data to determine whether it is accurate and reliable. The recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(d) Baseline, interim, and final evaluation reports are required for all agreements, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline provided in the FAS-approved evaluation plan. Evaluation reports submitted to FAS may be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e)(1) A recipient must, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the donated commodities sails from the final U.S. load port.

(2) A recipient must, if it has obtained procured commodities requiring ocean transportation, within 30 days after export of all or a portion of the procured commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the procured commodities sails from the load port in the target region.

(f)(1) A recipient must submit reports to FAS, using a form prescribed by FAS, covering the receipt, handling, and disposition of the donated commodities or procured commodities. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities or procured commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the recipient must submit to FAS, using a form prescribed by FAS, reports covering the receipt and use of the sale proceeds when the donated commodities were sold, the goods and services derived from barter when the donated commodities were bartered, and program income. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and program income have been disbursed and reported to FAS. When reporting financial information, the recipient must include the amounts in U.S. dollars and the exchange rate if proceeds are held in local currency.

(g) If requested by FAS, a recipient must provide to FAS additional information or reports relating to the agreement.

(h) If a recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and make a decision

based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(i) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.333 through 200.337. The date of submission of the final expenditure report, as referenced in 2 CFR 200.333, will be the final date of submission of the reports required by paragraphs (f)(1) and (2) of this section, as prescribed by FAS. The recipient must retain copies of and make available to FAS all sales receipts, contracts, or other documents related to the procurement of qualified commodities, the sale or barter of donated commodities, and any goods or services derived from such barter, as well as records of dispatch received from ocean carriers or overland transportation companies.

§ 1599.15 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive donated commodities or procured commodities, sale proceeds, FAS-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.331. The recipient must provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities or procured commodities, sale proceeds, FAS-provided funds, or program income to the subrecipient.

(b) A recipient must include the following requirements in a subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient is prohibited from using sale proceeds, FAS-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any donated commodities or procured commodities, sale proceeds, FAS-provided funds, interest, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) In accordance with §1599.19 and 2 CFR 200.501(h), a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A recipient must monitor the actions of a subrecipient as necessary to ensure that donated commodities or procured commodities, sale proceeds, FAS-provided funds, and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1599.16 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and FAS determines that the noncompliance cannot be remedied by imposing additional conditions, FAS may take one or more of the actions set forth in 2 CFR 200.338, including initiating a claim as a remedy. FAS may also initiate a claim against a recipient if the donated commodities or procured commodities are damaged or lost, or the sale proceeds, goods received through barter, FAS-provided

funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

§ 1599.17 Suspension and termination of agreements.

(a) An agreement or subagreement may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities or procured commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the target country.

(b) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed donated commodities or procured commodities and must dispose of such commodities only as agreed to by FAS;

(2) Is responsible for any sale proceeds, FAS-provided funds, interest, or program income that have not been disbursed and must use or return them only as agreed to by FAS; and

(3) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1599.18 Opportunities to object and appeals.

(a) FAS will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by FAS pursuant to § 1599.16. FAS will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. For example, if the action taken by FAS pursuant to § 1599.16 is to initiate suspension or debarment proceedings as authorized under 2 CFR parts 180 and 417, then the requirements in 2 CFR parts 180 and 417 will apply instead of the requirements in this section. In the absence of other applicable statutory or regulatory requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the official specified in the agreement within 30 days after the date of FAS's written notification to the recipient of the FAS action being challenged. This official will endeavor to notify the recipient of his or her determination (the initial determination) within 60 days after the date that FAS received the recipient's written objection.

(c) The recipient may appeal the initial determination to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that FAS received the appeal. The determination of the Administrator will be the final determination of FAS. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

§ 1599.19 Audit requirements.

(a) The audit requirements in subpart F of 2 CFR part 200 apply to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subagreement, in accordance

with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the recipient or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the recipient or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1599.20 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and have been assigned OMB control number 0551–0035. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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