

721 of Pub. L. 105-261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.306 revise paragraphs (l)(4)(ii), (iii), and (iv) and (q)(1)(ii) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(l) * * *

(4) * * *

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan, except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iii) If a plan has two options, and one option of the plan is discontinued, an annuitant who does not change the enrollment is considered to be enrolled in the remaining option of the plan, except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to the other option of the Blue Cross and Blue Shield Service Benefit Plan or to another health plan of his or her choice retroactively within 90-days after OPM advises the annuitant of the new enrollment;

* * * * *

(q) * * *

(1) * * *

(ii) Enroll in any plan in which the annuitant's share of the premium is less than the amount of annuity. If the annuitant elects to change to a lower cost enrollment, the change takes effect immediately upon loss of coverage under the prior enrollment. The exemptions from debt collection procedures that are provided under § 831.1305(d)(2) and § 845.205(d)(2) of this chapter apply to elections under this paragraph (q)(1)(ii).

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[FR Doc. 05-11578 Filed 6-9-05; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560-AH20

Designated Marketing Associations for Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets out regulations governing the use of designated marketing associations in connection with the making of marketing assistance loans for peanuts and the making of loan deficiency payments in lieu of such loans. These regulations reflect current procedures under broader regulations that precede this rule and specify when storage credit begins for loans handled by designated marketing associations.

DATES: Effective June 10, 2005.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, Program Manager, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC 20250-0512; telephone (202) 720-7935; facsimile (202) 690-3307; e-mail: chris.kyer@wdc.usda.gov. Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule sets out regulations governing the use of "designated marketing associations" (DMA's) by peanut producers in connection with the Farm Security and Rural Investment Act of 2002, Public Law 107-171, ("2002 Act"), in the making of marketing assistance loans (MAL's) and loan deficiency payments (LDP's) in lieu of MAL's. Section 1307(a)(4) of the 2002 Act provided for peanuts that such loans and LDP's could be obtained through a DMA or a marketing cooperative of producers approved by the Secretary, or the Farm Service Agency of the Department. Regulations governing such loans and LDP's are codified in 7 CFR Part 1421 and include DMA provisions. Rules relating to the use of cooperative marketing associations (CMA's) are found at 7 CFR Part 1425. This rule adds greater specificity to part 1421's DMA provisions consistent with current procedures and reorganizes part 1421 by designating a separate subpart for the DMA provisions. Also, the rule specifies

when storage credit may begin for DMA-handled loans. Also, § 1421.115 is renumbered as 1421.114 to reflect that the latter number was not being used. Further, the authority citation for Part 1421 is updated.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the administration of Title I of the 2002 Act shall be made without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Likewise, Section 1601 of the 2002 Act provides that in carrying out the provisions exempting the administration of the program from notice and comment, the Secretary shall use the authority provided under 5 U.S.C. section 808 of Title 5, United States Code. Under the latter provisions, certain rules are exempted from possible Congressional review before implementation where it is determined that going without notice and public procedures are in the public interest. Such is the case here, in light of the explicit provisions of Section 1601. In addition, this rule simply sets out procedures for voluntary participation by non-producers related to an ongoing program and the new regulations reflect current policy. For those reasons as well, delay in implementation would be contrary to the public interest. Accordingly, this rule is made effective on publication.

Executive Order 12866

This rule has been designated as "Not Significant" under Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Federal Assistance Programs

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

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent

with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) regarding compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

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

Paperwork Reduction Act

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

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. Currently, however, loan application forms are available electronically through the USDA eForms Web site for downloading. Applications from producers may be submitted to current DMA, by mail or by FAX if appropriate FAX authorization forms are on file. At this time, electronic submission of forms is also available and producers, or DMA's acting on their behalf, may also file for e-LDP's on line.

List of Subjects in 7 CFR Part 1421

Loan programs—agriculture, Peanuts.

■ For the reasons set out in the preamble, 7 CFR part 1421 is amended as set forth below.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

■ 1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7931 *et seq.*; 15 U.S.C. 714b, 714c.

■ 2. In § 1421.3, the definition of “Designated marketing association” is revised to read as follows:

§ 1421.3 Definitions.

* * * * *

Designated Marketing Association (DMA) means an entity, or a subsidiary thereof, that performs marketing functions for peanut producers and is designated to handle marketing assistance loans and loan deficiency payments for them. A DMA is eligible to perform those functions only if the DMA meets the eligibility criteria set out elsewhere in this part.

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§ 1421.115 [Redesignated]

■ 3. Section 1421.115 is redesignated as § 1421.114.

Subpart E—[Redesignated]

■ 4. Redesignate subpart E, §§ 1421.5551 through 1421.5559, as subpart F and add a new subpart E as follows:

Subpart E—Designated Marketing Associations for Peanuts

Sec.

- 1421.400 Applicability and abbreviations.
- 1421.401 Definitions.
- 1421.402 DMA responsibilities.
- 1421.403 DMA eligibility to process loans and loan deficiency payments.
- 1421.404 DMA approval.
- 1421.405 Financial security.
- 1421.406 Liability.
- 1421.407 Reporting requirements.
- 1421.408 Suspension and termination.
- 1421.409 Prohibited activity.
- 1421.410 Monitoring payment limitations.
- 1421.411 Recordkeeping requirements.
- 1421.412 Forms.
- 1421.413 Powers of attorney.
- 1421.414 Liens and waivers.
- 1421.415 Producer request to a DMA for an MAL or LDP.
- 1421.416 Processing marketing assistance loans.
- 1421.417 Processing loan deficiency payments.
- 1421.418 Disbursing MAL and LDP proceeds.
- 1421.419 Date storage credit begins on DMA-handled loans.
- 1421.420 Submitting MAL and LDP documentation to FSA.
- 1421.421 MAL or LDP servicing.
- 1421.422 Inspections and reviews.
- 1421.423 Appeals.

§ 1421.400 Applicability and abbreviations.

(a) This subpart sets forth the terms and conditions under which an entity which is a marketing association of peanut producers, or a subsidiary of such an entity, may qualify to become an eligible “designated marketing association” or “DMA” qualified to process peanut marketing assistance loans and peanut loan deficiency payments for peanut producers. This subpart only applies with respect to peanut loans and peanut loan deficiency payments. This subpart also specifies when storage credit will begin with respect to peanuts under loans handled by designated marketing associations.

(b) In addition to other abbreviations that may be used, the following abbreviations apply to this subpart:

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

(2) *CMA* means cooperative marketing associations which are the subject of regulations in part 1425 of this chapter.

(3) *DMA* means designated marketing associations.

(4) *EWR* means electronic warehouse receipts.

(5) *FSA* means the Farm Service Agency of the U.S. Department of Agriculture.

(6) *LDP* means loan deficiency payments as provided for in this part.

(7) *MAL* means marketing assistance loans as provided in this part.

§ 1421.401 Definitions.

The definitions set forth in this section shall apply for purposes of program administration under this subpart. The terms defined in this part, in part 718 of this title, and in parts 1425 and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions in this section.

Administrative County Office is the FSA County Office where a producer's FSA records are maintained.

Control or Recording FSA County Office is the FSA County Office that controls subsidiary files for producers designated as multi-county producers.

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.

DMA Service County Office is an FSA County Office designated by CCC to accept, process, and disburse bundled peanut MAL's and LDP's 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 MAL's and LDP's made by DMA's into CCC accounting systems.

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 MAL's and LDP's before a subsequent MAL or LDP is made to the DMA by an assigned FSA county office.

Electronic warehouse receipt or 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."

Security 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 security as CCC may deem appropriate.

§ 1421.402 DMA responsibilities.

(a) DMA's are eligible to process the marketing loans and loan deficiency payments provided for in this part only

for peanut producers and only if the DMA and the producers and peanuts meet all eligibility criteria set out in this part, including, but not limited to, the DMA eligibility provisions of this subpart. In carrying out those functions, DMA's must:

(1) Prepare and execute the appropriate CCC peanut MAL and LDP application documents;

(2) Determine whether producers and the commodity are eligible for MAL's and LDP's, including whether the otherwise eligible peanuts are free and clear of all liens which DMA's shall determine by performing lien searches at DMA's expense;

(3) Instruct the holder of EWR's, 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 MAL's and LDP proceeds to eligible producers;

(6) Prepare and execute documents for MAL repayments;

(7) Collect loan repayments from producers or buyers and transmitting these 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, DMA's shall:

(1) Become knowledgeable of and follow the procedures in CCC and FSA peanut program regulations, applicable notices published in the **Federal Register**, applicable FSA peanut program handbooks and amendments thereto, and any applicable notices or instructions issued by FSA and the Agricultural Marketing Service.

(2) Make and service CCC peanut MAL's and LDP's, only upon the presenting by producers or their agents of the warehouse receipts, unless otherwise directed by CCC.

(3) Attend, at the DMA's expense, DMA peanut MAL, and LDP program training offered by CCC.

(4) Provide sufficient personnel, computer hardware, computer communications systems, and software, as determined necessary by CCC, to administer the peanut MAL and LDP program.

§ 1421.403 DMA eligibility to process loans and loan deficiency payments.

(a) A DMA is eligible to process any marketing assistance loan or loan deficiency payments only if approved in advance to handle such matters by the Farm Service Agency pursuant to this part; and:

(1) The DMA meets the financial requirements and other requirements in this subpart and part;

(2) The DMA is comprised solely of peanut producers or is a subsidiary of an organization of peanut producers;

(3) The DMA is not controlled directly or indirectly by a person or entity that acquires peanuts for processing or crushing through a business involved in buying and selling peanuts or peanut products;

(4) The DMA does not take title at any time to any peanuts for which it processes loans or loan deficiency payments, irrespective of whether such title is taken before or after those activities are performed. If such title or interest is taken, the DMA shall be responsible to return to CCC the full amount of the CCC proceeds disbursed with respect to the peanuts; and

(5) The DMA meets any additional requirements imposed by CCC or FSA.

(b) The DMA's activities under this part shall 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 loan or when the loan deficiency payment 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.

§ 1421.404 DMA approval.

(a) Entities wishing to apply to be a DMA enabled to perform loan and loan deficiency functions under this part for peanuts must submit an application for such approval to FSA in a form approved by CCC. That application shall include the following:

(1) Two originals of a properly executed Designated Marketing Association agreement containing the terms and conditions prescribed by CCC.

(2) A financial statement of not less than 1 year old on the date submitted, including accompanying notes, schedules, or exhibits, certified by a certified public accountant as fairly representing the entity's financial condition.

(3) The entity's tax identification number.

(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 DMA's 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.

§ 1421.405 Financial security.

In order to be approved to handle loans and loan deficiency payments, the DMA must:

(a) Have a current net worth ratio of at least 1:1.

(b) Provide security equal to \$100,000 or a greater amount as determined by CCC.

§ 1421.406 Liability.

(a) DMA's shall indemnify CCC against any claim or loss by CCC in connection with the processing of any MAL's or LDP's or other activity carried out by the DMA. If CCC pays any claim or suffers a loss as a result of the actions of DMA, or if a refund otherwise becomes due to CCC, payment in the amount of such losses or refund, plus interest, may be set-off by CCC from the financial security provided by DMA as required by this subpart. If the amount of the loss exceeds the amount of the financial security, such amount shall be paid to CCC by DMA with interest. Interest and other charges may be assessed consistent with § 1403.9 of this chapter. Remedies provided in this section or part are in addition to other remedies or penalties, whether civil, criminal or otherwise, as may apply.

(b) If a DMA becomes liable to CCC under paragraph (a) of this section or otherwise in connection with this subpart, such DMA shall not be eligible to process a LDP or MAL until the claim amount owed CCC is paid in full, and the full amount of financial security required by this subpart has been restored.

§ 1421.407 Reporting requirements.

(a) *Report of changes.* A DMA shall furnish information to CCC within thirty calendar days relating to any substantial change in the DMA operations including but not limited to the following:

(1) A change in its articles of incorporation;

(2) A resolution affecting loan or LDP operations.

(3) A change to the DMA's name, address, phone number, or related information on the DMA agreement.

(b) *Other Information.* The DMA shall supply such additional information as CCC may request related to the DMA's continued approval by CCC to process loans and LDP's under the authority provided in this subpart.

(c) *CCC request for information.* CCC may require a DMA to submit updated information, a new application, or a request for recertification whenever CCC becomes aware of any changes or has any reason to be uncertain that the DMA is operating in a manner that is consistent with the information already submitted, or consistent with this part.

(d) *Annual recertification.* Within 4 months after the end of the DMA's fiscal year, a DMA must submit the following information to CCC:

(1) A current financial statement prepared according to generally accepted accounting principles;

(2) A report of audit or review of the financial statement conducted by an independent Certified Public Accountant. The accountant's report of audit or review shall include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statements.

(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.* DMA's shall 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.

§ 1421.408 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 MAL's and LDP's until the DMA corrects the violation, or longer.

(b) *Termination.* The DMA agreement may be terminated by the DMA upon 30-calendar day's written notice to CCC. CCC may cancel the agreement at any time. Upon termination DMA shall immediately cease processing MAL or LDP requests and documents except as needed to preserve CCC's position with respect to existing loans or LDP's.

§ 1421.409 Prohibited activity.

(a) DMA's approved to handle loans under this subpart may not:

(1) Discriminate against or deny any producer from receiving MAL's or LDP's

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 MAL's or LDP's from CCC.

(3) Pool the proceeds obtained from peanut MAL's or LDP's made by CCC.

(4) Process farm-stored certified or measured MAL's or LDP's 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 MAL's for the producer, repaying the MAL for the producer, obtaining LDP's for the producer, or marketing the producer's peanuts.

(8) Adopt any scheme or device to circumvent the purpose of the peanuts MAL and LDP program regulations, the regulation governing DMA's, or the DMA's agreement with CCC.

(9) Process MAL's or LDP's for producers involved in a bankruptcy proceeding unless authorized by CCC.

(10) Process MAL's or LDP's on ineligible peanuts.

(b) If the prohibitions of this section are violated FSA or CCC may take one or more of the actions authorized in this part or otherwise authorized.

§ 1421.410 Monitoring payment limitations.

DMA's shall monitor potential gains for producers and not disburse proceeds or permit loan repayments in lieu of forfeitures of the peanuts that would produce a gain over the per person per year limit allowed to the producer by this part and part 1400 of this chapter or which would otherwise be prohibited.

§ 1421.411 Recordkeeping requirements.

A DMA shall maintain producer MAL and LDP paper documents and electronic records for an indefinite period unless otherwise notified by CCC.

§ 1421.412 Forms.

For purposes of conducting business related to this part, a DMA shall use either current CCC forms or other forms approved by CCC. A DMA may perform functions under this part only when approval has been obtained by CCC.

§ 1421.413 Powers of attorney.

DMA's may hold a power of attorney from a producer allowing the DMA to

sign MAL and LDP documents for the producer, but DMA's may obtain and hold such powers only in accordance with the requirements of CCC governing such powers.

§ 1421.414 Liens and waivers.

DMA's performing loan-related functions pursuant to the authority in this subpart shall determine, to the same extent as required for loans handled by FSA county offices, whether a lien on the peanuts exists by performing or obtaining a lien search for all peanuts to be pledged for each MAL, except that the cost associated with such lien search and any necessary lien waivers shall be borne by the DMA. If a lien exists, the DMA shall obtain, on an approved CCC form, a signed waiver from each lienholder with an interest in any such lien.

§ 1421.415 Producer request to a DMA for an MAL or LDP.

Peanut producers or their authorized agent may request that an MAL or LDP be processed by a DMA only if the DMA is approved under this subpart to process such a request and only if the producer supplies to the DMA:

(a) *Beneficial interest information.* Beneficial interest must be maintained by the producer according to § 1421.6 for the peanuts to be eligible for MAL or LDP; accordingly, the producer must supply to the DMA such information as it needed to make that determination.

(b) *Warehouse receipts and lien information.* Producers must supply for all peanuts either individual paper warehouse receipts in the producer's name or an electronic warehouse receipt (EWR) number and provider's name. Producers must supply relevant lien information regarding the peanuts; however, the producer's obligation in this regard does not relieve the DMA from making the appropriate lien search.

§ 1421.416 Processing marketing assistance loans.

DMA's shall take the following actions in the following order when an application for an MAL is filed:

(a) Make all the determinations that are a precondition for a loan, including lien determinations and if requested by the producer, enter into a power of attorney agreement with the producer.

(b) If there is an EWR for the peanuts, instruct the current holder to notify the electronic warehouse receipt provider to amend the electronic warehouse receipt to show the DMA as holder. If a paper receipt is involved, the DMA must obtain the receipt (and later, at the appropriate time include the receipt in the documents delivered to the CCC).

(c) Complete all MAL forms.

(d) After the producer or the person holding the power of attorney for the producer signs MAL document, provide the signatory with copies of the documents.

(e) Where there is an EWR for the peanuts notify the EWR provider to make CCC the holder of the EWR and secure an affirmation verifying that CCC has been made the holder of the EWR.

§ 1421.417 Processing loan deficiency payments.

(a) DMA's shall take the following actions in the following order when an application for an LDP is filed:

(1) In addition to other determinations as must be made, the DMA shall determine whether the producer has sufficient remaining eligibility under the applicable payment limit to allow the receipt of the LDP. If there is not sufficient eligibility, the DMA must refuse to process the request;

(2) If EWR's 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 loan 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.

§ 1421.418 Disbursing MAL and LDP proceeds.

(a) A DMA may request that CCC establish a drawdown account from which to disburse MAL and LDP amounts to producers, and designate the financial institution they wish to use.

(b) CCC will determine whether a drawdown account is justified and the amount of the account.

(c) If there is no drawdown account, MAL and LDP proceeds shall be distributed to the producer within 3 work days from the date the DMA receives MAL or LDP proceeds from CCC, after deduction of authorized charges or fees for services. If there is a drawdown account, the MAL and LDP proceeds shall be distributed to the producer within 3 days of the completion of the application.

(d) The DMA shall assess charges and fees at the same rate for each producer that it serves.

(e) If a drawdown account is used, CCC shall replenish the amount as necessary as it is drawn down.

(f) The DMA must notify CCC of the actual date on which the MAL is disbursed.

§ 1421.419 Date storage credit begins on DMA-handled loans.

Storage credit in favor of a producer with respect to peanuts on a DMA-handled loan will begin on the date on which DMA disburses the MAL to the producer and not before.

§ 1421.420 Submitting MAL and LDP documentation to FSA.

(a) Until such time as an alternative FSA loan or LDP making system is made available to DMA's, within 3 business days of any DMA prepared disbursement, the DMA shall group separately and submit to FSA:

(1) MAL's with the same disbursement date, peanut type, warehouse code, and State where peanuts were inspected; and

(2) LDP's with the same LDP rate, approval date, and peanut type.

(b) Each of the groups identified in paragraph (a) of this section shall be submitted to FSA with the following documents:

(1) Individual paper warehouse receipts or EWR numbers, and the EWR provider's name representing the bundled MAL's or LDP's.

(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 EWR's as of the date of disbursement.

(d) In the case of an MAL, if CCC was not the holder of the EWR on or before the date the DMA prepared MAL was disbursed, the applicable receipts shall be rejected, and funds shall not be distributed to the DMA drawdown account until CCC becomes the holder of the EWR.

(e) If MAL and LDP documentation is acceptable, FSA will disburse MAL or LDP funds to the DMA, with appropriate supporting documentation.

§ 1421.421 MAL or LDP servicing.

(a) The DMA shall be responsible for servicing MAL's and are required to take the following actions:

(1) Send the producer a maturity notice letter before MAL maturity.

(2) Maintain the MAL or LDP documents according to FSA requirements.

(3) Transmit the necessary funds to repay the MAL to FSA.

(b) FSA shall process the CCC release of paper receipts or EWR's where such a release is appropriate.

§ 1421.422 Inspections and reviews.

The books, documents, papers, and records of the DMA and parent company shall be maintained for six years after the applicable crop year and shall be made available to CCC for inspection and examination at all reasonable times. At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the DMA is operating or has operated in accordance with the regulations in this part, any articles of incorporation, articles of association, partnership documents, agreements with producers, the representations made by the DMA in its application for approval, and, where applicable, its agreements with CCC. If the DMA is determined to be not complying with this part or any of its agreements, CCC will take appropriate action as provided in elsewhere in this subpart or other action CCC determines appropriate.

§ 1421.423 Appeals.

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

Signed in Washington, DC, on May 25, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05-11505 Filed 6-9-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 04-091-2]

Addition of Malaysia To List of Regions in Which Highly Pathogenic Avian Influenza Subtype H5N1 Is Considered To Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule

that amended the regulations concerning the importation of animals and animal products by adding Malaysia to the list of regions in which highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist. We took that action to prevent the introduction of HPAI subtype H5N1 in the United States.

DATES: The interim rule became effective on August 7, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Julie Garnier, Staff Veterinarian, Technical Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-5677.

SUPPLEMENTARY INFORMATION:

Background

Highly pathogenic avian influenza (HPAI) is an extremely infectious and fatal disease of poultry and a wide variety of other birds. HPAI can strike poultry quickly without any infection warning signs and, once established, the disease can spread rapidly from flock to flock. In some instances, strains of HPAI viruses can be infectious to people. Human infections with AI viruses under natural conditions have been documented in recent years. Particularly alarming is the HPAI strain of most of these outbreaks, H5N1, which has crossed the species barrier and caused severe disease, with high mortality, in humans. Recent outbreaks of HPAI in Southeast Asia have caused significant concern among health authorities worldwide because of the potential for the human and avian flu viruses to swap genes, creating a new virus to which humans would have little or no immunity.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including HPAI subtype H5N1.

In an interim rule effective August 7, 2004, and published in the **Federal Register** on February 1, 2005 (70 FR 5043-5044, Docket No. 04-091-1), we amended the regulations in part 94 by adding Malaysia to the list of regions in

§ 94.6(d) where HPAI subtype H5N1 exists.

Comments on the interim rule were required to be received on or before April 4, 2005. We received one comment by that date, from a private citizen. The commenter supported the interim rule.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 70 FR 5043-5044 on February 1, 2005.

Done in Washington, DC, this 6th day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-11504 Filed 6-9-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 92-024F]

Rin 0583-AC82

Food Standards: Requirements for Substitute Standardized Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.