DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Farm Service Agency

7 CFR Parts 718, 719, 720, 729, 790, 791, 793, 796

Commodity Credit Corporation

7 CFR Parts 1400, 1401, 1402, 1405, 1412, 1413, 1421, 1425, 1427, 1430, 1434, 1435, 1446, 1468, 1470, 1477, 1478, 1479, 1497, 1498

RIN 0560–AE81

Implementation of the Farm Program Provisions of the 1996 Farm Bill

AGENCIES: Farm Service Agency, Commodity Credit Corporation; USDA.

ACTION: Final rule.

SUMMARY: This final rule implements farm program provisions required by Title I of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The primary issues concern: changes to the dairy, sugar, and peanut programs; the establishment of production flexibility contracts for producers of wheat, feed grains, upland cotton, and rice that specify the terms and conditions for receiving payments from the Commodity Credit Corporation (CCC); statutory payment limitation provisions; implementation of marketing assistance loans, reduced loan repayment rates, and loan deficiency payments; and a cap on Cotton User Marketing Certificate payments.

This action will also: amend Chapter II to delegate authority to implement these programs from the Secretary to the Under Secretary for Farm and Foreign Agricultural Services and to the Administrator, Farm Service Agency (FSA) and to correct an erroneous reference to an existing delegation with respect to the Administrator, Foreign Agricultural Service (FAS); reorganize Chapter VII to consolidate the regulations in a more efficient manner, to free parts for future use and to remove obsolete provisions; and reorganize Chapter XIV so that the regulations of separate agencies that operate through CCC are located and organized in separate and identifiable parts.

This regulation will complete many of the actions being taken by FSA as part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: David Winningham, Director, Regulatory Review Group, FSA, USDA, Stop 0572, 1400 Independence Ave. SW, Washington, D.C. 20250–0572, Telephone: (202) 720–5457.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget.

Cost-Benefit Assessment

A cost-benefit assessment of the implementation of commodity programs provided under the 1996 Act was completed. Most of the impact on the farm sector is due to Title I provisions (Agricultural Market Transition Act of 1996). However, the cost-benefit assessment also incorporates, but does not separately analyze, the effects of the implementation of Title II (Agricultural Trade) and Title III (Conservation) provisions.

The assessment is based, in part, on analyses of supply, demand, and price conditions and trends in agricultural commodity markets conducted by the U.S. Department of Agriculture (USDA). Several USDA agencies conduct these analyses, which are coordinated through USDA's Interagency Commodity Estimates Committees. The Committees are composed of senior analysts and are responsible for publishing official USDA supply, demand, and price estimates/forecasts. Weather, trade policy, and economic uncertainties surrounding production and use projections can change these forecasts.

The 1996 Act was signed into law on April 4, 1996. The fiscal year (FY) 1997 President's Budget baseline estimates, based on supply and demand conditions as of January 1996 assumed an extension of 1995 program provisions as provided by the Agricultural Act of 1949, as amended (the 1949 Act) prior to enactment of the 1996 Act. The primary amendments to the 1949 Act which are incorporated in this analysis are the provisions of the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and related budget reconciliation acts in 1990 and 1993.

The 1996 Act replaces target prices, deficiency payments, and acreage reduction programs with fixed, but declining, payments to producers of contract commodities (wheat, corn, grain sorghum, barley, oats, upland cotton, and rice). Contract payments are based on historical acreage on the farm and will not change if acreage or market prices change. In general, producers with production flexibility contracts are given total flexibility to plant any crop on the farm, except fruits and vegetables. However, participating producers must comply with wetland and conservation requirements under Title XII of the Food Security Act of 1985.

The 1996 Act accelerates the trend of the previous two major farm acts toward greater market orientation, which gradually reduced the Government's influence in the agricultural sector. The reduced role of Government programs may make the sector more vulnerable to supply and/or demand shocks, but the increased planting flexibility and elimination of production adjustment programs allow producers to respond more rapidly. Thus, alternative production and marketing strategies that manage risk could increase in importance.

In aggregate, the national level of acreage planted to most of the major field crops under the 1996 Act is expected to be nearly the same as under the FY 1997 President's Budget baseline assuming continuation of the 1995 program provisions. However, the increased planting flexibility may result in a shift at the farm level and regionally to take advantage of differences in comparative advantage in production of specific crops. Plantings of the eight major field crops are expected to average only about 600,000 acres less compared with the baseline, due largely to the decoupling of payments from planting decisions and the freeing-up of haying and grazing restrictions. The 1996 Act will have little effect on fruits and vegetables because planting limitations are similar to the 1949 Act.

Total outlays for the contract commodities and marketing assistance loan commodities under the 1996 Act are estimated at $36.8 billion, about $23.0 billion higher than under the FY 1997 President's Budget baseline assuming continuation of the 1995 program provisions. This largely reflects higher contract commodity payments compared with projected deficiency payments under the FY 1997 President's Budget baseline.

Net farm income (including crop and livestock sectors) during the 1996–2002 calendar years is expected to be about $15 billion higher under the 1996 Act than under the FY 1997 President's Budget baseline. This largely reflects higher Government payments to farmers under the 1996 Act as production flexibility contract payments exceed

projected deficiency payments. Additionally, changes in the timing of payments to farmers provide an additional boost to farm income in the first year of the program—pushing 1996 net income up about $4 billion. However, net farm income is up by less than the increase in Government payments due to changes in the dairy and peanut programs. Crop sector receipts are down slightly under the 1996 Act due to lower plantings and production of the eight major commodities. Livestock sector receipts are lower due primarily to lower dairy sector receipts. Cash production expenses are up slightly due to increases in net cash rents, which offset lower crop production expenses from lower plantings.

Farmland values are higher under the 1996 Act compared with the FY 1997 President's Budget, reflecting the capitalized value of higher income. Land values average about 3 percent higher under the 1996 Act compared with FY 1997 President's Budget estimates.

Consumer costs are expected to be only slightly lower under the 1996 Act. Because grain prices, on average, are expected to be essentially unaffected, no appreciable change in grain-based food product costs, such as cereal and meat products, is expected.

The livestock sector, excluding dairy, is expected to benefit modestly from the 1996 Act because there are no restrictions on acreage that may be hayed or grazed, and, on average, feed prices are expected to be about unchanged. However, in aggregate, the net impact on nondairy livestock prices and production is negligible. Alternatively, the 1996 Act can be compared to a ''no program'' baseline. Under the 1996 Act, contract commodity payments represent a large portion of the benefits received by producers and there are few planting restrictions. The major differences between a no-program scenario (if the CRP and export programs were continued) and the 1996 Act are that producers would no longer receive contract commodity payments of about $35.9 billion and would no longer be subject to farm conservation and wetland protection requirements. The loss in farm income would likely entail substantial short-term adjustments and financial stress. However, over the longer term, a no-program scenario is expected to have little or no impact on supply, demand, and prices compared with the 1996 Act for most commodities except for peanuts, sugar, and, in the initial years of the period, dairy.

Plantings would be expected to decrease marginally with little or no change in market prices. Farm income would likely be lower, but lost revenue from eliminating contract commodity payments would be partially offset by lower cash rents. Land values would be lower if there were no program. In the aggregate, compared with a no-program scenario, impacts of the 1996 Act on the livestock industry, input industry, consumers, and the general economy would be minimal in the long run. However, impacts in some sectors, such as those dependent on the peanut program and sugar program, may be more significant.

The economic impacts of the peanut program provisions of the 1996 Act, including eliminating the peanut quota floor (which is addressed in a separate rule), reducing the quota price support level, and requiring the program to operate at no net cost are expected to reduce producers' revenue by $1.5 billion from 1996 to 2002, while taxpayers are expected to benefit by avoiding costs of $0.5 billion compared with the FY 1997 President's Budget baseline. Consumers benefit from lower prices. Quota lease and capitalized values of the quota are also expected to decline.

Under a ''no peanuts program'' scenario, producer prices would decline, resulting in gains to first buyers of peanuts of $150 to $160 million annually, compared with the 1996 provisions. Over the 7-year life of the program, the capitalized gain to first buyers would total about $800 million, assuming a 10 percent capitalization rate. Beet sugar production under the 1996 Act is expected to expand slightly faster than under the FY 1997 President's Budget baseline because of the elimination of domestic marketing allotments. Production of raw cane sugar is expected to be the same. Sugar imports are forecast to be somewhat lower under the 1996 Act reflecting the increase in beet sugar production. Based on the FY 1997 President's Budget baseline, the sugar program is expected to offer nonrecourse loans in most years covered by the 1996 Act because the tariff rate quota is expected to be above 1.5 million short tons, raw value. Sugar prices are not expected to change significantly on average because supply is expected to be unchanged from the FY 1997 President's Budget baseline. The 1996 Act is expected to increase Federal revenues by $49 million over FY's 1996–2002, compared with the FY 1997 President's Budget baseline, by increasing assessments on sugar marketed.

One study estimated, under the assumptions of a low initial world price for raw sugar, averaging 7.5 cents per pound, and unilateral elimination of the U.S. sugar program, that the U.S. program increased the domestic sugar price by an average of 13 cents per pound from 1984 to 1989. The study estimated that this domestic price premium cost U.S. sweetener users $2.8 billion per year; increased returns to sugarcane growers, sugar beet growers, and sweetener processors by $2.1 billion; increased returns to foreign quota holders by $403 million; and cost other foreign sugar suppliers $2.3 billion (by lowering the world price); and benefitted foreign consumers $2.2 billion (1988 dollars).

Another study estimated that trade liberalization by the U.S., the European Economic Union, China, and the former Soviet Union in sugar would result in a domestic price of 22.4 cents per pound, which is about the current domestic price under existing U.S. trade restrictions. Since beet sugar production costs are lower than raw cane sugar production and refining costs in the United States, very little disruption of the domestic sugar industry would be expected with multilateral deregulation of the world sugar market.

In the dairy sector, milk production is expected to be lower compared with the FY 1997 President's Budget baseline as dairy farmers respond to lower milk prices. Consumers benefit from lower milk and dairy product prices as product clears through the marketplace as the support program is being phased out by January 1, 2000. Cash receipts in the dairy sector are lower under the 1996 Act, also a result of the price support program being phased out. Lower farm milk prices are only partially offset by the elimination of the assessment on all milk marketings that became effective on May 1, 1996.

Lower producer prices under a ''no dairy program'' scenario would result in gains to first buyers of milk of about $175 million per year over the 7-year period, FY 1996–2002, compared with the new program. Most of the gains to first buyers would occur during the first half of the period, before the support program is eliminated. Lower farm-level prices for milk could provide a temporary windfall to manufacturers and retailers of milk and dairy products, but competitive pressures would be expected eventually to lead to much of the reduction in producer prices being passed on to retail consumers.

The 1996 Act provides the Secretary some limited implementation options. Alternative options, reasons for selecting a particular option, and

analyses of the individual commodity sector impacts of the 1996 Act, compared with FY 1997 President's Budget, are presented in the assessment.

For further information, the following individuals may be contacted regarding the different parts of the assessment:

Part I—Contract Commodity Payment, Marketing Assistance Loan, and Related Provisions of the Agricultural Market Transition Act (Contact: Philip Sronce, 202–720–2711)

Part II—Sugar (Contact: Dan Colacicco, 202–720–6733)

Part III—Dairy (Contact: John Mengel, 202–720–6733)

Part IV—Peanuts (Contact: Verner Grise, 202–720–5291)

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases-10.051; Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; Rice Production Program-10.065; and Conservation Reserve Program-10.069.

Regulatory Flexibility Act

It has been determined that 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 provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental 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

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are 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 provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 161(d) of the 1996 Act requires that the regulations necessary to implement Title I of the 1996 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. These regulations affect the immediate planting and marketing decisions of an extraordinarily large number of agricultural producers. In addition, with respect to the revision of 7 CFR part 2, 5 U.S.C. 553 specifically provides that rules relating to agency organization may be published without the issuance of a general notice of proposed rulemaking. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, this rule is effective upon publication in the Federal Register.

Background

1. Part 2 Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

Delegations of authority are made from the Secretary to the Under Secretary for Farm and Foreign Agricultural Services and from the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, FSA, to formulate policies and administer programs authorized by Title I of the 1996 Act. In addition, an erroneous delegation is corrected and obsolete delegations are removed.

2. Part 718 Reporting and Maintaining Farm Records and General Compliance Provisions

The regulations regarding the determination of acreage and compliance, such as requirements for acreage reports, are amended to conform to the program changes required by the 1996 Act. As a result of the broad planting flexibility under the new regulations producers will no longer be required to submit acreage reports on the production on the farms. Reporting will only be required regarding the planting of fruits and vegetables in order to receive production flexibility contract payments. Producers who seek marketing assistance loans shall file an acreage report, before harvest, on the production to be used for the marketing assistance loan. No additional voluntary reporting by producers will be considered for the purpose of determining benefits under future programs. Section 718.7 is reorganized to reduce its size and improve clarity. Also, internal agency procedures are removed from the regulations and obsolete references are updated or removed. Parts 719—Reconstitution of Farms, Allotments, Normal Crop Acreage, and Preceding Year Planted Acreage, 720—General Policy and Interpretations, 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary, 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program, 793—Rule of Fractions, and 796—Denial of Program Eligibility for Controlled Substance Violations are consolidated into part 718 for efficiency and ease of use.

3. Part 729 Peanuts

The 1996 Act amended the Agricultural Adjustment Act of 1938 (the 1938 Act) to provide a poundage quota program for the 1996 through 2002 crops of peanuts. Quota matters under the 1938 Act will be addressed in a separate rule. This rule amends part 729 to implement the provision of section 155 of the 1996 Act dealing with peanut marketing assessments. The price support provisions of section 155 will be addressed in the portion of this rule amending part 1446.

Under section 155(g)(1) of the 1996 Act, the Secretary is directed to collect a nonrefundable marketing assessment on peanuts produced in each of the 1996 through 2002 crops on all peanuts marketed and considered marketed in the same manner as the assessment previously collected under provisions of the 1949 Act. The per-pound basis for the assessment as a percentage of the national average quota or additional peanut loan rate for the applicable crop is, for producers, 0.6 percent for the 1996 crop and 0.65 percent for the 1997 through 2002 crops, and, for the first purchaser, 0.55 percent for each of the 1996 through 2002 crop years. Sections 155(d)(4) and (7) of the 1996 Act provide further that the amounts of the assessments not required to offset losses in area quota marketing pools shall be transferred to the Treasury.

Further, section 155(d)(8) of the 1996 Act requires that the marketing

assessment collected from producers be increased if the offsets, as provided in part 1446 of this title, are not sufficient to cover losses in an area quota pool. The increased assessment will be in an amount determined by the Secretary to be necessary to cover such losses and shall apply to the quota peanuts produced in the marketing area covered by that pool.

Accordingly, this rule amends § 729.316, and adds a new § 729.317. Any shortfall in additional assessments made to cover losses will be made up in increased assessments in subsequent years. Any excess collections from increased assessments to cover losses shall be held by the Secretary to cover net losses in the pool in subsequent years in the same marketing area.

4. Part 1400 Payment Limitation and Payment Eligibility

This rule clarifies the existing policy and implements the payment limitation and eligibility requirements of the 1996 Act. The payment limitation and eligibility provisions formerly found at parts 1497 and 1498 are combined and revised in a new part 1400. The 1996 Act provides a $40,000 limitation per fiscal year on payments made to a person under one or more production flexibility contracts, a $50,000 limitation on the total of adjustments made pursuant to sections 113(c)(1) and 113(c)(2) of the 1996 Act and paid to person under one or more flexibility contracts, and a $75,000 limitation on the amount of marketing loan gains and loan deficiency payments a person may receive. The 1996 Act applies the payment limitation and payment eligibility requirements and restrictions of the Food Security Act of 1985 to payments made under production flexibility contracts, marketing loan gains, and loan deficiency payments. This rule will also update regulations providing that persons who are not U.S. citizens are not eligible for farm program payments, and make other minor changes to enhance the implementation of the 1996 Act.

5. Parts 1401 and 1470 Commodity Certificates, In Kind Payments, and Other Forms of Payment

Chapter XIV provides regulations for programs operated by the Commodity Credit Corporation (CCC). Currently, three agencies operate programs under CCC: the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Foreign Agricultural Service (FAS). Currently, regulations for each agency are not all co-located. The chapter will be reorganized to combine and unify each agency's regulations in easily identifiable parts, as follows:

Parts 1400–1409 General CCC Regulations and Policies
Parts 1410–1464 FSA
Parts 1465–1479 NRCS
Parts 1480–1499 FAS

Part 1470 is thus redesignated as part 1401.

6. Part 1402 Policy for Certain Commodities Available for Sale

This final rule amends part 1402 to delete the requirement that general sales offering information will be issued on a monthly basis.

7. Part 1405 Loans, Purchases and Other Operations

This final rule implements changes to § 1405.1 by incorporating the additional 1 percent interest requirement set forth for CCC loans, and reserves § 1405.5. Also, the rule implements crop insurance requirements and contract violation provisions set forth by the 1996 Act.

8. Part 1412 Production Flexibility Contracts for Wheat, Feed Grain, Rice, Upland Cotton

This final rule sets forth the rules and regulation for a new Federal farm subsidy program. In the past, payments were determined by taking into consideration the acreage planted to a crop and acreage devoted to a conserving use. In addition, payments were only made when the price of a commodity fell below an established (''target'') price set forth in the 1949 Act. The new program decouples farm program payments from program crop planting requirements. This rule allows farms having a 1996 crop acreage base established for one or more of the following crops: wheat, corn, barley, grain sorghum, oats, cotton and rice (''contract commodities'') to be enrolled under a Production Flexibility Contract for a period of 7 years. A producer may enroll the farm and one or more contract commodities in a 7-year contract. Contract payments are calculated by multiplying 85 percent of the contract acreage times the farm program payment yield for the crop times the payment rate for the crop.

The major provisions of these regulations include the following provisions. Farms with previous years' crop acreage bases established on a rotation basis for a crop shall have 1996 crop acreage bases for the crop established by dividing the sum of planted and considered planted acreage for the rotation cycle by the number of years in the rotation cycle. The sign-up period for the program begins May 20, 1996, and ends August 1, 1996. A producer on an enrolled farm may plant any crop, including crops other than the contract commodity, on acreage normally devoted to a contract commodity crop except for certain fruits and vegetables, for which limitations are set forth in this regulation. Tobacco may be planted on contract acreage; however, tobacco acreage on a farm cannot exceed that farm's tobacco quota or allotment. Any 1996 crop acreage bases on a farm not enrolled by August 1, 1996, shall not be eligible to be enrolled after that date unless such crop acreage base is released upon expiration of a Conservation Reserve Program (CRP) contract that expires or is voluntarily terminated after August 1, 1996. Producers who violate a Production Flexibility Contract may be denied benefits under the Production Flexibility Contract for its duration, depending on the nature of the violation. No acreage reduction program requirements apply to this program. The regulations also provide that landowners must provide fair treatment to sharecroppers and tenants in order for the landowner to receive program benefits.

9. Part 1421 Loans and Loan Deficiency Payments for Grains and Similarly Handled Commodities

Part 1421 provided price support loan and loan deficiency payments for the 1991 and subsequent crops of wheat, feed grains, rice, oilseeds, and loans for farm-stored peanuts. The 1996 Act continues to authorize loan and loan deficiency payments for these commodities from 1996 through 2002. The 1996 Act does not authorize the following: (1) purchase agreements; (2) farmer-owned reserve (FOR); (3) a rice marketing certificate program; (4) loans for high moisture barley; (5) loans and loan deficiency payments for rye; and (6) loan extensions. This rule removes these references from part 1421. The 1996 Act changes the repayment rate for rice loan and loan deficiency payments and the maturity date for oilseeds. Provisions of part 1421 have been amended as necessary to delete price support terminology; and to reflect the reorganization of the Department of Agriculture (USDA) pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, 7 U.S.C. 6991.

Rules for the Rice Marketing Certificate Program are deleted.

10. Part 1425 Cooperative Marketing Associations

This rule implements changes in the regulations for cooperative marketing

associations (CMA's) that obtain loan and loan deficiency payments on behalf of their members for the 1996 through 2002 crop years. The 1996 Act does not authorize: (1) loans and loan deficiency payments for rye and honey; (2) wool and mohair payments; and (3) purchase agreements. This rule removes rye, honey, wool, and mohair as approved commodities, removes purchase agreement provisions, deletes price support terminology, makes changes necessary to reflect the reorganization of USDA, and removes definitions found elsewhere in this title. The term ''cooperative'' is amended to CMA.

11. Part 1427 Cotton Loan Programs

The 1996 Act sets forth the statutory authority for the cotton loan program. This rule makes amendments to part 1427 that will incorporate applicable provisions of the 1996 Act, provide greater clarity, and remove obsolete provisions. The provisions of these regulations are generally the same as regulations in effect with regard to the 1991 through 1995 crops.

However, § 1427.7(a) has been amended to remove the provisions for 8-month extensions of upland cotton and extra long staple cotton nonrecourse loans. The 1996 Act prohibits extensions for all loans authorized under the 1996 Act. CCC will continue the provisions for 8-month loan extensions for the 1995 upland cotton crop. Sections 1427.8 and 1427.11(g) and (h) have been amended to remove the provisions that the amount of the loan shall be reduced by the amount of any unpaid warehouse receiving charges, warehouse storage charges in excess of 60 days, or charges for new bale ties. However, § 1427.13(e) has been added to require the producer, if the producer elects to forfeit cotton to CCC, to pay to CCC all warehouse receiving and storage charges that accrued on such forfeited cotton prior to the date such cotton is tendered for loan.

Section 1427.19 has been amended to modify the repayment level for upland cotton loans beginning with the 1996 crop. The 1996 Act removed the minimum repayment rate of 70 percent of the national average loan rate. Under the 1996 Act, upland cotton loans may be repaid at the lesser of: (1) the loan level and charges, plus interest; or (2) the adjusted world price. In addition, § 1427.19 has been amended to clarify when CCC will pay warehouse storage charges to permit upland cotton loans to be repaid at the adjusted world price. Report language accompanying the 1996 Act provides that current policy for establishing the repayment rate for upland cotton should be continued, including crediting storage costs against the repayment amount. Accordingly, the regulations provide that producers will be responsible for paying storage costs, except when producers repay a loan at a lower rate when the adjusted world price of upland cotton is less than the total of the principal amount of the loan plus accrued interest and storage costs accruing after the cotton was pledged as collateral for the loan. This is the same procedure as was used in prior years. However, producers will now be responsible for storage charges accruing before the loan was obtained.

Section 1427.24 has been reserved. The 1996 Act does not authorize recourse loans except for recourse seed cotton loans, which are covered in subpart D of this part.

Section 1427.100 is amended to set forth changes to the upland cotton user marketing certificate program. A proposed rule was published in the Federal Register on March 13, 1996, at 61 FR 10289, requesting comments on a proposal to address bunching of export sales under the upland cotton user marketing certificate (Step 2) program by setting the exporter payment rate on the date the cotton is shipped. Comments were also solicited on several alternative policies to fix bunching such as prohibiting sales through third parties or to foreign affiliates, or requiring exporters to provide evidence of a *bona fide* export sales contract, identify the end user, or disclose the amount of the Step 2 payment applied to the sales price.

The 30-day public comment period ended on April 12, 1996. A total of 123 comments were received from 85 producers, nine ginners, seven regional producer associations, five producer co-ops, five U.S. textile manufacturers, five shippers, the Embassy of Australia, and six national organizations including the American Cotton Shippers Association (ACSA), the National Cotton Council (NCC), the NCC Producer Steering Committee, the American Textile Manufacturers Institute (ATMI), the National Cotton Ginner's Association (NCGA) and the Cottongrowers Warehouse Association (CWA).

One hundred and thirteen comments supported the proposal, including all 85 producers, nine ginners, and five producer co-ops as well as six regional producer associations, four textile manufacturers, the NCC Producer Steering Committee, NCGA, CWA and ATMI. The following reasons for supporting the proposal were cited by one or more of those who commented: solves the bunching problem, fixes an otherwise good program; maintains competitiveness in both domestic and export markets; brings the program closer in line with the original legislative intent; puts exporters and domestic mills on an equal basis; removes the incentive for exporters to bunch; limits program abuse; limited transportation facilities would make bunching under this proposal too hard and expensive to control; results in a return to normal marketing practices; gives exporters an incentive to ship U.S. cotton on optional origin contracts; and enables exporters to be competitive on future sales.

ACSA, the Embassy of Australia, one regional producer association and four shippers opposed the proposal. The following reasons were cited by one or more of those who commented: compromises the competitiveness feature of the Step 2 program by decoupling the payment rate from the sale date; could result in bunching, disrupt shipping, and cause congestion at ports and container terminals; will not increase sales of U.S. cotton in foreign markets; does not remove the potential for Step 2 to produce a high value payment rate, unrelated to the market, and may require further changes in the future to fix any unintended effects; increases the reporting burden on program participants and USDA; is a give-away program providing the exporter with a windfall profit; will generate negative publicity; may indirectly subsidize foreign buyers who compete with U.S. textile mills if export contracts include agreements that pass on to buyers all or part of any Step 2 payment received by the exporter; the U.S. Treasury would not receive income tax revenue on payments shared with foreign buyers; may result in higher cotton imports under Step 3 (import quota), which would lower producer prices; and shippers would be the only entities to reap the benefits of the program.

Several other comments on the proposed rule were received. One textile manufacturer indicated that the Step 2 program should be for mills only, but if exporters were included, the payment rate should be set only when the final destination is declared. ACSA and two shippers recommended that the Step 2 program be discontinued for exporters. The Embassy of Australia recommended that the Step 2 program be eliminated entirely. Although NCC supported a rule change to address bunching, the organization could not achieve unanimity among the seven industry segments on a specific solution, so NCC could not endorse the proposal. One shipper commented that the Step 2 program is fundamentally flawed and

cannot be fixed by this or any other proposal.

Several comments about alternative policies were received. The NCC Producer Steering Committee and three regional producer associations stated that basing the exporter payment rate on the date the final destination is declared would also solve the bunching problem. The Embassy of Australia indicated that, like the proposal, the alternative policies listed in the proposed rule would likely have negative, unintended consequences. One regional cotton producer association recommended that USDA continue to study alternatives to improve Step 2.

As pointed out in several comments, the proposal would decouple the exporter payment rate from the sales date. However, to derive a fair solution to bunching, the interests of all participants must be weighed. Although the legislative intent was to make U.S. cotton competitive, Step 2 was not intended to favor one subset of participants over another in the process. In the past, U.S. mills and exporters without foreign affiliates have been at somewhat of a disadvantage vis-a-vis exporters with foreign affiliates. Mills cannot lock in payments until the cotton is actually consumed, whereas under current procedures, exporters lock in their payment rate on the sale date, which can be months before the cotton is actually shipped. Exporters with foreign affiliates have a greater capacity to do this than exporters without such affiliates. To leave existing rules in place for exporters would continue to place these groups at a disadvantage. Also, the 1996 Act put a $701 million cap on Step 2 payments for fiscal years 1996 through 2002. The proposed rule would make access among participants to Step 2 payments more equitable.

Disruptions in the infrastructure caused by exporters' trying to bunch their exports are not anticipated. Due to the physical limitations of the transportation system, exporters will not be able to bunch exports to the extent they were able to bunch sales contracts.

The recordkeeping and reporting burden on both program participants and CCC would be reduced significantly under the proposed rule. Exporters would only report to CCC those exports made during a week a payment rate was in effect. There would no longer be a need to track current-crop/forward-crop shipment data nor would the requirement to register sales cancellations and replacements be retained. Also, as a result of changes to the exporter side, CCC has determined that domestic mills would no longer have to report as much data about their consumption during weeks in which the payment rate is zero. Adopting this proposal would simplify program administration for CCC and all program participants.

ACSA, which represents a large segment of the U.S. shipping industry, called for the removal of exporters from the Step 2 program. One shipper stated that the provisions of the new farm bill should provide ''all tools necessary to compete in foreign markets.'' CCC has no authority to exclude exporters from the Step 2 program or to eliminate the Step 2 program. Whenever certain price conditions occur, CCC is obligated by law to issue Step 2 payments to program participants who have signed an agreement. Since new agreements must be signed in order to continue to participate in the program, exporters or domestic mills who believe that participation in the program will not serve their interests may elect to not sign.

The 1996 Act Statement of Managers directed the Secretary to eliminate the bunching problem to the extent practicable without significantly disrupting normal marketing processes in domestic and export markets. The industry did not offer alternatives except to suggest that basing the exporter payment rate on the date the final destination of the cotton is declared would solve the bunching problem.

As one comment pointed out, the proposal may not remove the potential for high payment rates. However, bunching, not high payment rates, was identified in the proposed rule as the problem to be addressed. The payment rate calculation is designed to close the gap between U.S. and world prices, which may at times be significant. If a high payment rate occurred, mills and exporters would have equal access to payments under the proposed rule.

Under current rules, with the payment rate determined as of the date of sale, bunching of sales in the Step 2 program may have given foreign mills an advantage over domestic mills by giving foreign mills access to U.S. cotton with high Step 2 payments. Although it is true that under the proposed rule foreign buyers will still benefit as exporters pass on to them all or part of the Step 2 payment, the elimination of bunching should prevent the fixation of season-high Step 2 payment rates on large volumes of exports, as has been observed in past years. Overall, the program should be fairer to U.S. mills.

After considering these comments, this rule adopts as final the proposed rule published on March 13, 1996. However, because new legislation was enacted on April 4, 1996, two additional changes to the Step 2 regulations are incorporated into the final rule. First, the 1996 Act extended the Step 2 program through July 31, 2003, and second, the legislation provided that total expenditures for the program during fiscal years 1996 through 2002 shall not exceed $701,000,000. Obligations incurred by CCC to exporters under this program before April 5, 1996, are not subject to this funding restriction. Obligations incurred by CCC on or after April 5, 1996, are subject to the $701,000,000 restriction.

CCC has determined that cotton contracted for delivery after September 30, 1996, by eligible exporters will be covered under the new regulations and the terms and conditions of the revised agreement. Exporters will be eligible to receive Step 2 payments on such cotton if they sign a new agreement and if a payment rate is in effect during the week the cotton is exported. However, if, prior to July 18, 1996, a positive payment rate was secured for cotton sold for delivery after September 30, 1996, CCC will make payments to eligible exporters in accordance with the terms and conditions of CCC–1045 (4–15–94) Revision 2. Any payments made on cotton contracted for delivery after September 30, 1996, will count against the $701,000,000 statutory limit.

The new rules will become effective on July 18, 1996. To continue to participate in the Step 2 program, exporters and domestic users must sign and return the revised agreement to CCC.

12. Part 1430 Dairy Products

The amendments to the dairy regulations made by this rule address requirements of the 1996 Act regarding: (1) The price support level for milk; (2) ineligibility of certain products for price support purchase when State-allowed manufacturing allowances exceed certain levels; (3) the Dairy Refund Program; (4) the deletion of regulations for the Dairy Termination Program; (5) a future recourse loan program for milk products; and (6) technical revisions to part 1430 to reflect a recent USDA reorganization. The 1996 Act addresses a number of other dairy issues, such as milk promotion, export programs, and Federal marketing orders. Other rules and/or notices regarding those subjects will be issued as appropriate.

Section 141 of the 1996 Act authorizes the Milk Price Support Program from May 1, 1996, through December 31, 1999. Authority for price support previously provided by section 204 of the 1949 Act, as amended by the Food, Agriculture, Conservation, and

Trade Act of 1990 (the 1990 Act), was repealed as of May 1, 1996. Milk prices are to be supported through the purchase of butter, nonfat dry milk and cheese. Under the 1996 Act, the levels of support for milk containing 3.67 percent milkfat are: $10.35 per hundredweight during calendar year 1996, $10.20 per hundredweight during calendar year 1997, $10.05 per hundredweight during calendar year 1998, and $9.90 per hundredweight during calendar year 1999.

Provisions for price support, previously codified at § 1430.282, have been deleted and § 1430.2 has been added to implement the 1996 Act provisions. Section 1430.1 has been added to provide the definitions for Subpart A—Price Support Program for Milk.

Section 141 of the 1996 Act further provides that: (1) The CCC support purchase prices for each of the products of milk (butter, cheese, and nonfat dry milk) announced by CCC shall be the same for all of that product sold by persons offering to sell the product to CCC, and (2) the purchase prices shall be sufficient to enable plants of average efficiency to pay producers, on average, a price that is not less than the rate of price support in effect for milk. The Secretary may allocate the rate of price support between the purchase prices for butter and nonfat dry milk in a manner that will result in the lowest level of CCC expenditures, or achieve such other objectives as the Secretary considers appropriate. The Secretary may make such adjustments not more than twice during a calendar year. Purchase announcements will reflect these provisions.

Also, however, § 1430.3 is added to provide that CCC will suspend the purchase of butter, cheese and nonfat dry milk from plants in a State that provides, through its regulation of milk prices, manufacturing allowances in excess of those authorized by section 145 of the 1996 Act. The maximum manufacturing allowances allowed by section 145 are: (1) $1.65 per hundredweight for milk manufactured into butter and nonfat dry milk; and (2) $1.80 per hundredweight for milk manufactured into cheese. The new regulation also specifies appeal procedures.

The Dairy Refund Program, as authorized by section 204(h) of the 1949 Act, provided for a reduction in the price dairy producers receive and a method by which they could obtain a refund. Section 141(g) of the 1996 Act repeals section 204 of the 1949 Act, effective May 1, 1996. However, section 141(e)(1) of the 1996 Act authorizes a refund of the total reduction in a producer's price during calendar year 1996 to producers who provide evidence that they did not increase total milk marketings in calendar year 1996 compared to their total marketings in calendar year 1995. Section 1430.362 is added to provide for refunds of 1996 reductions in price and to clarify procedures and ongoing policies regarding refund payments and producer eligibility.

Also, rules for the Dairy Termination Program (DTP) are deleted from part 1430 because the contract periods for DTP contracts have expired. This will not affect rights and liabilities under any DTP contract.

The Recourse Loan Program for Commercial Processors of Dairy Products is authorized by section 142 of the 1996 Act, and becomes effective on January 1, 2000. The program will offer recourse loans to commercial processors of eligible dairy products to assist in the management of inventories of eligible dairy products and to assure a degree of price stability for the dairy industry. These eligible dairy products are cheddar cheese, butter, and nonfat dry milk. The loan rates will reflect a milk equivalency value of $9.90 per hundredweight of milk containing 3.67 percent butterfat. The parties receiving the loans will be liable for full repayment of the loan principal and interest. Regulations have been added at subpart C of part 1430 to provide for this program.

Finally, provisions of part 1430 have been amended as necessary to reflect the reorganization of USDA.

13. Part 1434 General Price Support Regulations for Honey

The 1996 Act did not authorize loan and loan deficiency payment programs for the 1996 and subsequent crops of honey. This action will remove the regulations for the program.

14. Part 1435 Sugar Program

Section 156 of the 1996 Act repeals section 206 of the 1949 Act and institutes new sugar loan and marketing assessment programs. The regulations governing the administration of the sugar loan program will be extended through the 2002 crop year and changed to reflect the changes mandated by the 1996 Act, which are as follows:

(1) Section 156(a) requires the national loan rate for raw cane sugar to be fixed at 18 cents per pound;

(2) Section 156(b) requires the national loan rate for refined beet sugar to be fixed at 22.90 cents per pound;

(3) Section 156(e) requires the Secretary to offer recourse loans unless the tariff-rate quota (TRQ) is established at, or increased to, a level above 1.5 million short tons, raw value, at which time CCC must offer nonrecourse loans and convert any existing recourse loans to nonrecourse loans; and

(4) Section 156(g) requires a penalty of 1 cent per pound, raw value, for raw cane sugar and 1.072 cents per pound of refined beet sugar to be assessed on the forfeiture of sugar pledged as collateral for nonrecourse loans.

Section 156(c) requires the Secretary to reduce the loan rates if the major sugar producing nations reduce their support for their domestic sugar industries more than their commitments as part of the Uruguay Round Agreements Act. CCC will promulgate new regulations should such a reduction occur.

This rule also eliminates redundancies, clarifies terms, and simplifies the Sugar Loan Program regulations. These regulations are also modified to reflect the 1996 Act's authorization of the loan program through the 2002 crop year. The definitions in §§ 1435.101, 1435.201, and 1435.401 are consolidated into § 1435.2. Definitions of recourse and nonrecourse loans and the tariff-rate quota have been added. All references to the Deputy Administrator for State and County Operations (DASCO) are changed to the Deputy Administrator for Farm Programs (DAFP) to reflect the reorganization of USDA.

Part 1435 is renumbered to reflect the complete reorganization of the part. A new section on loan types, § 1435.102, is added to reflect the availability of recourse loans and nonrecourse loans. The fixed national loan average rates are listed in § 1435.103. Section 1435.104 is expanded to consolidate requirements previously found in § 1435.7 and § 1435.9. Supplemental loans remain limited to sugar produced from sugarcane or sugar beets harvested during July, August, and September. Storage facility requirements are now set forth in § 1435.108. Section 1435.107, Settlement and Foreclosure, has been organized to reflect the differences between the settlements of nonrecourse loans and recourse loans. The bonding and other provisions of § 1435.11 that required loan recipients to provide CCC with financial assurances that producers would be paid the minimum grower payments have been deleted from the regulations.

Section 156(f) of the 1996 Act requires sugar marketing assessments to increase 25 percent for the fiscal years (FY) 1997 through 2003. The assessment on raw cane sugar increases from 1.1 percent to 1.375 percent of the loan rate for raw

cane sugar, or an increase from 0.198 cents to 0.2475 cents per pound in FY 1997. The assessment on refined beet sugar increases from 1.1794 percent to 1.47425 percent of the loan rate for raw cane sugar. Since the raw cane sugar loan rate is fixed at 18 cents per pound, the assessment rate increases from 0.2123 cents to 0.2654 cents per pound, refined basis. If the raw cane sugar loan rate were to be reduced, the marketing assessments would be reduced accordingly and put forth in revised regulations.

Section 156(h) of the 1996 Act extends the information reporting requirements through the 2002 crop year. The suspension of sugar marketing allotments permits the simplification of the information reporting regulations. The exhibits containing the reporting forms have been removed from the revised regulations.

Section 171(a)(1)(E) of the 1996 Act suspends sugar marketing allotments for the 1996 through 2002 crop years. The regulations regarding sugar marketing allotments are removed because the crop year ends June 30, 1996, and the deadline for announcing marketing allotments for this fiscal year has passed.

Section 171(b)(1)(j) suspends section 401(e)(2) of the 1949 Act, which provides for benefits to be paid to producers in the event of bankruptcy or insolvency of processors. The regulations regarding protection for sugar beet and sugarcane producers are, therefore, removed.

15. Part 1446 Peanuts

The 1996 Act amends the 1938 Act and the 1949 Act to provide, for the 1996 through 2002 crop years, the peanut price support program and for the contracting, handling and disposing of additional peanuts. The peanut price support regulations that relate to the making of warehouse-stored price support loans on peanuts and other activities are found at part 1446. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified at part 1446, as of January 1, 1996.

This rule also implements provisions of section 155 of the 1996 Act dealing with peanut warehouse-stored loans, contract additional peanuts, peanut handler operations and other matters. Specifically, this rule changes the peanut regulations in part 1446 regarding these provisions as follows:

1. In § 1446.103, the definition of ''eligible producer'' has been changed, in accordance with provisions of the 1996 Act, to provide that, under the conditions stated in the section, producers who pledge 100 percent of the crop as loan collateral for 2 consecutive years may not be eligible for price support.

2. In § 1446.103, the definition of ''Support rate—National Average'' has been changed to reflect the new statutorily set national average price support rate for quota peanuts of $610.00 per ton.

3. In § 1446.307, the disaster transfer provisions for producers who transfer Segregation 2 or Segregation 3 peanuts from additional loan pools to quota loan pools have been changed, as required by the 1996 Act, by limiting the quantity of peanuts eligible for such a transfer to 25 percent of the total farm quota pounds, excluding pounds transferred in the fall and by reducing the support rate on such transferred peanuts to 70 percent of the quota support rate for the marketing year in which the transfers occur.

4. In § 1446.308(a)(2), the New Mexico pool eligibility requirements have been changed, as required by the 1996 Act, by adding a clause that controls the quantity of Valencia peanuts that are physically produced in Texas that may be placed in the New Mexico pools based on amounts previously produced in Texas on farms administratively located in New Mexico.

5. In § 1446.308 the rules have been amended to implement new provisions of the 1996 Act relating to the recovery of losses in area quota loan pools, including provisions for increased marketing assessments to make the peanut program a ''no-net-cost'' program.

6. Miscellaneous changes to the regulatory text have been made as a result of the USDA reorganization, the need to update references to forms and to change dates, and for technical and grammatical sufficiency.

16. Part 1468 Wool and Mohair

The National Wool Act of 1954, as amended, terminated the Wool and Mohair program effective December 31, 1995. This action will remove the regulations for the program.

17. Parts 1477, 1478, and 1479 Disaster Payment Program for 1990 and Subsequent Crops, Tree Assistance Program, and Forage Assistance Program

Authority for these programs has expired. Parts 1477, 1478, and 1479 are therefore removed.

Paperwork Reduction Act

As provided in section 161(d) of the 1996 Act, the Paperwork Reduction Act is not applicable to these regulations. However, the forms necessary to conduct these programs have been submitted for clearance to the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 718

Acreage inspection, Acreage measurement, Acreage reporting, Compliance, Controlled substance violation, Crop insurance requirement, Delegations of Authority, Eminent domain, Farm Constitution, Finality rule, Reconstituting farms, Signature requirements, Substantive change, Tolerance, Transfer of allotments and quotas, Variances.

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1400

Aliens, Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton, Price Support programs

7 CFR Part 1405

Federal crop insurance, Loan programs-agriculture, Price support programs.

7 CFR Part 1412

Production Flexibility Contracts for Wheat, Feed Grain, Rice, Upland Cotton.

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

7 CFR Part 1425

Cooperatives, Financial requirements, Loan and loan deficiency payment programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1427

Cotton loan programs/agriculture, Packaging and containers, Marketing certificate programs, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

7 CFR Part 1430

Agriculture, Assessment, Dairy products, Manufacturing allowances, Milk, Price support program, Recourse loans.

7 CFR Part 1434

Honey, Loan program—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1435

Loan programs/agriculture, Reporting and recordkeeping requirements, Sugar.

7 CFR Part 1446

Loan programs—agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 1468

Assistance grant program—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

For the reasons set out in the preamble, 7 CFR Chapters I, VII and XIV are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 is revised to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 C.F.R. 1949–1953 Comp., p. 1024.

2. Section 2.16(a)(1) is amended by adding a new paragraph (a)(1)(xxiv) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(1) * * *

(xxiv) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

* * * * *

3. Section 2.16 is amended by removing and reserving paragraphs (a)(3)(xxix) and (a)(3)(xxx).

4. Section 2.42(a) is amended by adding paragraph (a)(44) to read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

* * * * *

(44) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

* * * * *

5. Section 2.42(a)(43) is amended by removing the term ''charge'' and inserting the term ''arrange'' in its place.

§ 2.43 [Amended]

6. Section 2.43 is amended by removing and reserving paragraphs (a)(29) and (a)(30).

7. Chapter VII is amended by revising part 718 to read as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

Subpart A—General Provisions

Sec.

Subpart B—Determination of Acreage and Compliance

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in Chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA).

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

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

(d) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, 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.

(e) No provisions or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

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

§ 718.2 Definitions.

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

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

Agricultural Use means devoting the land to annual or perennial crops, including conserving uses, pasture, aquaculture or plantings of trees for any purpose. Land may be left fallow, but weeds must be controlled.

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

Allotment crop means any crop for which acreage allotments are

established pursuant to parts 723 and 729 of this chapter.

Combination means consolidation of two or more farms or parts of farms into one farm.

Contract acreage means the quantity of acres enrolled in a contract in accordance with part 1412 of this title.

Contract commodity means a crop of wheat, corn, grain sorghum, oats, barley, upland cotton, or rice.

Controlled substances means the term as set forth in accordance with 21 CFR part 1308.

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

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.

Crop reporting date means date established by the Administrator, FSA, representing the final date by which the farm operator, farm owner, or properly authorized agent must report applicable crop acreage for the report to be considered timely filed.

Cropland

(1) Means land which the county committee determines meets any of the following conditions:

(i) Is currently being tilled for the production of a crop for harvest;

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

(iii) Is currently devoted to a one- or two-row shelterbelt planting, orchard, or vineyard;

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

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

(vi) Is preserved as cropland in accordance with part 704 or 1410 of this title.

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

(i) No longer used for agricultural production;

(ii) No longer suitable for production of crops;

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

(iv) No longer preserved as cropland in accordance with the provisions of part 704 or 1410 of this title and does not meet the conditions in paragraphs (1)(i) through (1)(vi) of this definition; or

(v) Devoted to trees (other than those set forth in accordance with part 704 or 1410 of this title, one- or two-row shelterbelt plantings, orchards, or vineyards) which were planted in the preceding year except that land planted to trees or devoted to ponds, lakes, or tanks from September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year, and in the current year shall retain its cropland classification for the current year.

Current year means the year for which applicable allotments, quotas, and acreages, or other program determinations are established for that program. For controlled substance violations, the year that contains the date of actual conviction.

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

Determination means a decision issued by a State, county or area FSA committee or the employees of such a committee that affects a participant's participation in a program administered by FSA.

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

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

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

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

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including legally adopted children;

(5) Great grandchildren;

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

(7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm means land that is being operated by one producer with equipment, labor, accounting system and management substantially separate from that of any other unit. Land on which tenants provide their own labor and equipment shall not be considered a separate farm.

Farm inspection (spot-check) means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

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

Farm program payment yield means the yield for a crop which is determined in accordance with part 1413 of this title as in effect on January 2, 1996.

Farmland means the sum of the cropland, forest, and other land on the farm.

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

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, or other measuring device, that is expressed in chains and links.

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

Landlord means one who rents or leases farmland to another.

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

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

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

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

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

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

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

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

Operator means an individual, entity, or joint operation who is determined by the county committee as being in general control of the farming operations on the farm during the current year.

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

(1) Who is buying farmland under a contract for deed;

(2) Who has a life-estate in the property; or

(3) (i) For purposes of enrolling a farm in a program authorized by Chapters VII and XIV of this title one who has purchased a farm in a foreclosure proceeding and:

(A) The redemption period has not passed; and

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

(ii) One who meets the provisions of paragraph (3)(i) of this definition shall be entitled to receive benefits in accordance with such a program only to the extent the owner complies with all program requirements.

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

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

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

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

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

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

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

Production flexibility contract means a contract entered in accordance with part 1412 of this title.

Prohibited plants means marijuana (cannabis sativa), opium poppies (papaver somniferum), coca bushes (erythroxylum coca), cacti of the genus lophophora and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

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

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

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

Reported acreage means the acreage reported by the farm operator, farm owner, or a properly authorized agent on form FSA–578, Report of Acreage, or other form designated by the Deputy Administrator.

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

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

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

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

Staking and referencing means determining an acreage before planting by:

(1) Measuring a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision of a field; and,

(2) Staking and referencing the area on the ground.

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

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

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

Tenant means:

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

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

Tolerance means for marketing quota crops, and peanuts, a prescribed amount within which the reported acreage may differ from the determined acreage and still be considered as correctly reported.

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

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

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

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

§ 718.3 State committee responsibilities.

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

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

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

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

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

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

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

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

§ 718.4 Authority for farm entry and providing information.

(a) The provsions of this section are applicable to any farm enrolled in a program authroized by Chapter XIV of this title, all farms on which peanuts are planted for harvest (part 729 of this chapter), and all farms that have an effective tobacco allotment or quota (part 723 of this chapter).

(b) To ascertain compliance by producers to the regulations specified in paragraph (a), a representative of FSA may enter any farm specified in such paragraph. An owner, operator or producer on a farm may refuse the FSA representative entry to the farm and request FSA to provide written authorization for the entry. If entry is not allowed within 30 days of such written notification:

(1) All program benefits otherwise available with respect to such farm in accordance with such regulations shall be denied;

(2) The person objecting to the entry shall pay all costs associated with cost of the inspection by FSA of the farm;

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

(4) With respect to tobacco produced on such farm, the farm operator must furnish proof of disposition of:

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

(ii) Other kinds of tobacco produced on the farm and no credit will be given for disposing of any excess tobacco other than properly identified by a marketing card unless such tobacco is disposed of in the presence of a representative of FSA in accordance with § 718.109.

(c) If an owner or operator of a farm refuses to furnish reports or data which are necessary to determine benefits in accordance with the regulations specified in paragraph (a) or FSA determines that the report or data was erroneously provided through the lack of good faith by the operator or owner, all benefits will be denied with respect to the farm which would otherwise be available in accordance with the program under which the report or data is requested.

§ 718.5 Delegations of authority.

The State committee or State Executive Director, as authorized by the Deputy Administrator may, in accordance with instructions issued, exercise the authority provided in this part in cases where the total of any payments and benefits extended under Chapters VII and XIV of this title does not exceed:

(a) $5,000 for cases subject to § 718.8; or

(b) $25,000 for cases subject to § 718.9.

§ 718.6 Signature requirements and time limitations.

(a) When a program authorized by this chapter and parts 1410 and 1412 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to the county FSA office which administers FSA and CCC programs with respect to each farm.

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

(1) Program documents required to be executed in accordance with part 3 of this title and part 704 of this chapter;

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

(3) Form FSA–211, Power of Attorney and Form FSA–211–1, Power of Attorney for Husband and Wife; and

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

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

§ 718.7 Failure to fully comply.

In any case in which the failure of a producer to fully comply with the terms and conditions of a program authorized by this chapter precludes the making of price support to such producer, the Deputy Administrator for Farm Programs may authorize the making of such price support in such amounts as determined to be equitable in relation to the seriousness of the failure if the regulations of this title authorizing the program specifically authorize such action. The provisions of this part shall only be applicable to producers who are determined to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.8 Incomplete performance based upon action or advice of an authorized representative of the Secretary.

(a) Notwithstanding any other provision of the law, performance rendered in good faith based upon action of, or information provided by, any authorized representative of a County or State Farm Service Agency Committee, may be accepted by the Administrator, FSA (Executive Vice President, CCC), the Associate Administrator, FSA (Vice President,

CCC), or the Deputy Administrator for Farm Programs, FSA (Vice President, CCC), as meeting the requirements of the applicable program, and benefits may be extended or payments may be made therefor in accordance with such action or advice to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this section shall be applicable only if a producer relied upon the action of a county or State committee or an authorized representative of such committee or took action based on information provided by such representative. The authority provided in this part does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the committee or its authorized representative upon which they relied was improper or erroneous, or where the producer acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices, or advice.

§ 718.9 Finality rule.

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

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

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

(3) The determination was modified by the Administrator, FSA, or the Executive Vice President, CCC; or

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

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

§ 718.10 Rule of fractions.

(a) Rounding of fractions shall be done after the completion of the entire computation which is being made. In making mathematical determinations all computations shall be carried to two decimal places beyond the required number of decimal places as specified in the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure sat the last required decimal place shall be increased by ''1'' as follows:

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more).	7
Tenths	7.649 (or less).	7.6
	7.650 (or more).	7.7
Hundredths ...	8.8449 (or less).	8.84
	8.8450 (or more).	8.85
Thousandths	9.63449 (or less).	9.634
	9.63450 (or more).	9.635
10 thousandths.	10.993149 (or less).	10.9931
	10.993150 (or more).	10.9932

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

§ 718.11 Denial of Benefits.

(a) For the purposes of this section, a person means an individual.

(b) Any person convicted under Federal or State law of planting cultivating, growing, producing, harvesting, or storing a controlled substance as defined in 21 CFR part 1308 shall be ineligible for:

(1) With respect to any commodity produced by such person that crop year, and during the four succeeding crop years any price support loan available in accordance with parts 1446 and 1464 of this title;

(2) Any payment made under any Act; and

(3) A payment made under the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c) for the storage of an agricultural commodity that is produced during such crop year, or any of the four succeeding crop years by such person.

(c) If any person denied benefits under this part is a beneficiary of a trust, benefits for which the trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the beneficiary in the trust.

§ 718.12 Furnishing maps.

The cost of furnishing reproductions of photographs, mosaics and maps is free upon request to the farm operator, owner, Federal Crop Insurance Corporation (FCIC) and reinsured companies, Natural Resources Conservation Service (NRCS) and other Federal or State Agencies performing their official duties in making FSA and related program determinations. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

Subpart B—Determination Of Acreage and Compliance

§ 718.101 Measurements.

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

(1) After the established final reporting date for the applicable crop except as provided in § 718.103;.

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

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

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

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was

measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage by more than the allowable tolerance, the producer must destroy the excess acreage and pay for an authorized employee of FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraph (b)(1) through (3) of this section and those who are subject to the regulations cited in paragraph (b)(4) and (5) of this section must submit accurate information as required by these provisions.

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

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

(3) Participants in the programs authorized by parts 704 and 1410 of this title must report the use of the land enrolled in such programs;

(4) Participants in the programs authorized by parts 723 and 1464 of this title (except burley tobacco producers) must report the acreage planted to tobacco by kind (except burley tobacco) on all farms that have an effective allotment or quota greater than zero; and

(5) Participants in the programs authorized by parts 729 and 1446 of this title must report the acreage planted to peanuts by type.

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

(d) Peanut producers shall provide the county office evidence of disposition of any peanuts that are kept on the farm, including:

(1) Type and quantity for use for seed on any farm in which the producer has an interest; and

(2) Type, quantity, names, and addresses of purchases for peanuts sold or given to others.

(e) Peanut producers shall provide the county office information for acquisition of seed peanuts from other sources, including:

(1) Name and address of person who sold or gave producer the peanuts;

(2) Type, farmer's stock or shelled basis, and quantity; and

(3) Acquisition date.

§ 718.103 Late filed reports.

(a) A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to the existence and use made of the crop, the lack of the crop or a disaster condition affecting the crop.

(b) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the County Committee has determined that failure to report in a timely manner was beyond the producer's control.

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 1996 and subsequent years to change the acreage reported if the county committee determines that the revision does not have an adverse impact on the program and the acreage has not already been determined by FSA.

(b) Revised reports shall be filed and accepted:

(1) At any time for all crops if evidence exists for inspection and determination of the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the requirements of paragraph (a) have been met and the producer was in compliance with all other program requirements by the applicable established crop reporting date.

§ 718.105 Tolerances, variances, and adjustments for tobacco.

(a) Tolerance or variance for tobacco is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements.

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

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

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

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

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

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

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

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

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

§ 718.106 Acreages.

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

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

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

§ 718.107 Skip rows and strip crops.

(a) To be considered under the skip row provisions of this section the field must be planted in a uniform planting pattern and the number of rows planted between skips cannot exceed 36 rows. If more than one pattern is used within a field, the area planted to each pattern will be considered a subdivision.

(b) The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than 64 inches wide, except where cotton is planted in skip row patterns:

(1) If the distance between the rows is 30 inches the strips of the idle land are less than 60 inches wide; or

(2) If the distance between the rows is 32 inches or wider and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row if the producer has a history of planting 32-inch or wider rows.

(c) The county committee shall determine if the producer has a history of 32-inch or wider rows by verifying that cotton acreage has been planted in 32-inch or wider rows in past years and reported on the acreage report, or reported to other State or Federal Agencies.

(d) If the strips of idle land are too wide to be classified as solid planted in accordance with paragraph (b) of this section the acreage of the strips planted to the crop, including one-half the distance between the rows of the crop but not less than 15 inches beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(e) When one crop is alternating with another crop, the entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than 64 inches.

(f) If strips of the alternating crop are too wide to be considered solid planted in accordance with paragraph (b) of this section and if the alternating crop:

(1) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller of one-half the distance between the strips of the crop being measured or 30 inches shall be considered as being devoted to the crop being measured; or

(2) Does not have substantially the same growing season as the crop being measured, then the acreage of the crop being measured shall be determined in accordance with paragraph (b) or (c) of this section.

(g) When the crops are planted in single wide rows, the entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than 64 inches. If the distance between the rows of the crop is at least 64 inches, only 64 inches in width for each row shall be considered as being devoted to the crop.

§ 718.108 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.107 shall be deducted from the acreage of the crop if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

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

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

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

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

§ 718.109 Adjustments.

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

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

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

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

§ 718.110 Notice of measured acreage.

Written notice of measured acreage shall be on Form FSA–468, Notice of Determined Acreage, when mailed to the farm operator and shall constitute notice to all interested producers on the farm.

§ 718.111 Redeterminations.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 calendar days after the date of the notice furnished the farm operator in accordance with § 718.109 or § 718.110 or within 5 calendar days after the initial appraisal of the yield of a crop or before any of the farm-stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination.

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

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

(i) Five percent or 5 pounds for cotton;

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

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

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

(3) The acreage of the crop is:

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

(ii) Considered to be within program requirements.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

§ 718.201 Farm constitution.

(a) Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by one person as a single farming unit except that it shall not include:

(1) After August 1, 1996, land subject to a production flexibility contract with land not subject to a production flexibility contract;

(2) Land under separate ownership unless the owners agree in writing;

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

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

(i) All of the land is owned by one person and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same State and are owned by the same person if:

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

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

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

(5) Federally owned land;

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

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

(8) For land subject to production flexibility contracts, land located in counties that are not contiguous. However, this subparagraph shall not apply if:

(i) Counties are divided by a river;

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

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

(9) With respect to peanut poundage quotas, land across:

(i) County lines when the quotas established for the land involved cannot be transferred; or

(ii) State lines.

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

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

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

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

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

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

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator;

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

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located; or

(7) Land is sold for or devoted to nonagricultural commercial or industrial uses; however, a reconstitution is not required and allotments, quotas and acreages may remain with the farm if either of the following apply:

(i) The land is already devoted to residential, recreational, industrial or commercial buildings; or

(ii) The owner would qualify to use the landowner designation method of division in accordance with § 718.205 or the allotments and quotas can be transferred by sale or owner in accordance with this part and parts 723 or 729 of this chapter and the owner of the parent farm and the purchaser file a signed written memorandum of understanding before Form FSA–476 or Form MQ–24 is issued, stating that the land will be devoted immediately or within 3 years to:

(1) Nonagricultural commercial uses; or

(2) Recreational, residential, industrial or non-farm commercial uses.

(d) Notwithstanding the provisions of paragraphs (c)(1) through (c)(7), a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

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

(2) Circumvent any other chapter of this title.

§ 718.202 Determining the land constituting a farm.

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

(b) A minor shall be considered to be the same owner or operator as the parent or court-appointed guardian (or other person responsible for the minor child) unless:

(1) The minor child is a producer on a farm;

(2) Neither the minor's parents nor guardian has any interest in the minor's farm or production from the farm;

(3) The minor establishes and maintains a separate household from the parent or guardian;

(4) Personally carries out the farming activities in the operation; and

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

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

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

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

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

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

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

§ 718.203 County committee action to reconstitute a farm.

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

§ 718.204 Reconstitution of allotments, quotas, and acreages.

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

(b) Reconstitutions of farms subject to a production flexibility contract in accordance with part 1412 of this title will be effective for the current year if initiated on or before July 1 of the fiscal year.

(c) For tobacco and peanut farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (b) and (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs found in this title.

§ 718.205 Rules for determining farms, allotments, quotas, and acreages when reconstitution is made by division.

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

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

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

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and acreages, such allotments, quotas, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

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

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and acreages, including historical acreage that has been doublecropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section. In the case of land subject to a Wetlands Reserve Program easement or Emergency Wetlands Reserve Program easement, the parent farm shall retain the allotments, quotas, and acreages.

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landowner may designate, as provided in this paragraph, the manner in which allotments, quotas, and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and acreage that shall be permanently reduced when the sum of the allotments, quotas, and acreages exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments or quotas. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments or

quotas, shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments and quotas, with respect to the part which has been owned for 3 years or more.

(5) The designation by landowner method is not applicable to:

(i) Burley tobacco quotas; or

(ii) Crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(6) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or acreage has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and acreages between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4).

(d) (1) The contribution method is the proration of a parent farm's allotments, quotas, and acreages to each tract as the tract contributed to the allotments, quotas, or acreages at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply. The contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if FSA records are available to show the amount of contribution.

(2) The county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(e) The agricultural use method is the proration of contract acreage to the tracts being separated from the parent farm in the same proportion that the agricultural and related activity land for each tract bears to the agricultural and related activity land for the parent farm. This method of division shall be used if the provisions of paragraphs (b) through (d) of this section do not apply.

(f) (1) The cropland method is the proration of allotments and quotas to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments and quotas which are more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(2) The cropland method shall not be used to divide contract acreage.

(g)(1) The history method is the proration of allotments and quotas to the tracts being separated from the farm on the basis of the allotments and quotas determined to be representative of the operations normally carried out on each tract. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in the proration of allotments and quotas, more representative than the cropland method of division of the operation normally carried out on each tract; and

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

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

(3) The history method shall not be used to divide contract acreage.

(h) (1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d), (e), (f) and (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

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

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

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

(1) Among family members;

(2) By the estate method; and

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

§ 718.206 Rules for determining allotments, quotas, and acreages when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and acreages, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and acreages for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204(a)(3).

§ 718.207 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating allotments and quotas, with respect to land involved in eminent domain acquisitions. Such allotments and quotas, in accordance with this section, may be pooled for the benefit of the owner who is displaced from the acquired farm by eminent domain acquisition. Such pooling shall be for a 3-year period from the date of displacement or during such other period as the displaced owner may request for the transfer of allotments and quotas, from the pool to other farms owned by such person.

(b) An eminent domain acquisition is a taking of title to land, or the taking of

an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain.

(c) For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) The owner shall be considered displaced from a farm which is subject to an eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency or its designee if the lease provided uninterrupted possession to the owner from the date of acquisition to the end of the lease or extensions of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that allotments and quotas may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period of the pool.

(f) Whenever the county committee determines, by notice from the owner or otherwise, that an owner has been displaced from the farm, the county committee shall establish a pool for the allotments and quotas eligible for pooling under this section for a 3-year period beginning on the date of displacement. Pooled allotments and quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) Pooling is not permitted or required:

(1) If the county committee determines that an agency has authority under its eminent domain powers to acquire a farm for the continued production of an allotment or quota and does so acquire a farm only for such purpose and files a written notice with the county committee of the county in which the farm is located at the time of acquisition designating the allotment and quota to be produced on the farm, there shall be no pooling of such allotment and quota. Such farm allotments and quotas shall be established for the farm in accordance with applicable commodity regulations. For acreages, there shall be no pooling of the acreage under any circumstances if an agency acquires land and retains the land in an agricultural or related activity;

(2) If the displaced owner files written notice with the county committee of an intention to waive the right to have all the allotments and quotas or any part thereof pooled and the county committee determines that the displaced owner has not been coerced to waive such right, the allotments and quotas shall be retained on the agency acquired land;

(3) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and quotas shall be retained on the portion of the farm not acquired by the agency and shall not be pooled;

(4) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on a farm, the allotments and quotas attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. The amount of an allotment and quota which may be retained on the farm cannot exceed the land devoted to an agricultural or related activity. Allotments and quotas which are not retained shall be pooled; or

(5) If, prior to pooling, an owner files a request to transfer the allotments and quotas to other farms in the same county which are owned by such owner, the county committee may approve a direct transfer without the formal establishment of a pool. Such transfer shall be subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled allotments and quotas notwithstanding other provisions of applicable commodity regulations.

(h) Pooled allotments and quotas may be released on an annual basis by the owner to a county committee during any year for which allotments and quotas are pooled and not otherwise transferred from the pool. The county committee may reapportion the released allotments and quotas to other farms in the same county that have allotments or quotas for the same commodity. Pooled allotments and quotas shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled allotments and quotas which are released shall be considered to have been fully planted in the pool and not on the farm to which such allotments and quotas are reapportioned.

(i) Pooled allotments and quotas that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled allotment or quota, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j) (1) The displaced owners may request a transfer of all or part of the pooled allotments and quotas to any other farm in the United States which is owned by the displaced owner, but only if there are farms in the receiving county with allotments and quotas, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of an allotment and quota from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining an allotment or quota from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the allotment and quota is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage which is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that an allotment or quota is transferred;

(v) The contractual arrangements between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the allotment or quota is transferred; and

(vi) The contractual arrangements under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the State where the receiving farm is located (the receiving State committee). Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraph (j)(4) (ii), (iii) and (iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the allotment or quota is transferred.

(6) Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate notice of allotment and quota under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining the amount of the allotment and quota available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the allotments and quotas, most recently established for the acquired farm placed in the pool. When all or a part of the allotment and quota placed in the pool is transferred and used to establish or increase the allotment and quota for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments and quotas to have been planted on the receiving farm for which an allotment and quota, are established or increased under this section. If only a part of the available allotment and quota is transferred from the pool, the remaining part of the allotment and quota, shall remain in the pool for transfer to other farms of the owner until all such

allotments and quotas have been transferred or until the period of eligibility for establishing or increasing allotments and quotas under this section has expired.

(7) If any allotment or quota is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or that the conditions of paragraph (j)(4) of this section are not met, the allotment and quota for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the allotment or quota transferred from the pool. If the time period for the transfer of the allotment or quota from the pool has not expired, the amount of allotment or quota initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could exercise the right of administrative review. Any cancellation of the transfer of an allotment or quota by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county committee shall issue a notice of any marketing quota and penalty as may be required in accordance with applicable commodity regulations.

(8) If the displaced owner files a request for transfer of pooled allotments or quotas, within the prescribed period for filing such request, but the request for transfer is filed during a year in which all or a part of the pooled allotments or quotas were released to the transferring county committee pursuant to paragraph (h), the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of pooled allotment or quota involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment or quota for which the transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the allotments and quotas are retained on the portion not acquired as provided in paragraphs (g) (3) and (4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may file with the county committee a written designation of beneficiary of the rights in the allotments and quotas attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or negotiate a lease with the agency or its designee, the regular transfer rights with respect to farms owned by such beneficiary, and the release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights provided under paragraph (l)(1) of this section:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraph (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If an allotment or quota for an acquired farm next established after the data of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the allotment or quota shall be reduced in the pool in accordance with the applicable commodity regulations.

§ 718.208 Exempting federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity which is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 718.209 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information with respect to the present operations on the farms, including all leasing arrangements, shall also be set forth in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota under this section shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by

the same percentage as the allotment or quota being transferred is adjusted. The amount of the allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be subject to the condition that an acreage equal to the allotment and quota transferred, before any productivity adjustment, shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If such a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected by the transfer. If a county committee obtains evidence that the conditions applicable to any transfer under this section have not been met, a report of the facts shall be made to the State committee. If the State committee determines that such conditions have not been met, the transfer will be canceled, and the allotment and quota shall be retransferred to the original farm. Where cancellation and retransfer is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation of the transfer.

PART 729—PEANUTS

8. The authority citation for part 729 continues to read as follows:

Authority: 7 U.S.C. Chapters 1301, 1357 *et seq.*, 1372, 1373, 1375; and 7 U.S.C. Chapter 1445c–3.

9. For the reason set out in the preamble, § 729.316 is revised to read as follows:

§ 729.316 Marketing assessments.

(a) Subject to adjustments in accordance with § 729.317, a nonrefundable marketing assessment shall, in the amount provided for in this section, be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, including marketings by pledging peanuts as collateral for a price support loan. The per pound assessment as a percentage of the applicable national average quota or additional peanut loan rate, shall be an amount equal to:

(1) 1.15 percent for the 1996 crop; and

(2) 1.2 percent for the 1997 through 2002 crops.

(b) *Collections and payment of marketing assessments.* The first purchaser of peanuts shall:

(1) Collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by:

(i) In the case of the 1996 crop, a per pound amount equal to .6 percent of the national average loan rate; and

(ii) In the case of each of the 1997 through 2002 crops, a per pound amount equal to .65 percent of the applicable national average loan rate.

(2) In addition to the amount collected under paragraph (1) of this section, pay a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by .55 percent of the applicable national average loan rate.

(c) *Private marketings.* For all peanuts retained on the farm for seed or other uses or marketed by such producer to any person outside the United States or marketed in private marketings through a retail or wholesale outlet to any person who is not required to register as a handler in accordance with part 1446 of this title, the producer shall pay a marketing assessment equal to the full amount determined by multiplying the per pound amount provided in paragraph (a) of this section by the gross weight of the peanuts if they are uninspected farmers stock peanuts or, if inspected, the net weight of such peanuts. If such peanuts are shelled before they are marketed, the quantity marketed shall be converted to a farmers stock equivalent as consistent with this part, for purposes of determining the amount of assessment that is due.

(d) *Loan collateral peanuts.* With respect to peanuts that are pledged as collateral for a price support loan through an approved warehouse, an assessment shall be:

(1) Determined and paid by multiplying the net weight of such peanuts by the applicable per pound amount provided in paragraph (b)(1) of this section for private sales and deducting the total from the loan value of such peanuts before other deductions may be made for any other reason; and

(2) Further determined and paid by multiplying the net weight of such peanuts, when sold from the price support inventory, by the applicable per pound amount provided in paragraph (b)(2) of this section for private sales and collecting that amount from the person who acquires such peanuts from the applicable association or from the CCC.

(e) *Remittance of marketing assessments.* With respect to marketing assessments as provided in:

(1) Paragraph (b) of this section, such assessments shall be remitted in a manner prescribed by the Deputy Administrator. To avoid a penalty, as prescribed in this section, the marketing assessments due with respect to any lot of peanuts acquired directly from a producer must be remitted during the 15 days that follow the week in which the data from the applicable Form FSA–1007 is due to be transmitted to FSA in accordance with the provisions in part 1446 of this title. For purposes of this section a week shall be the 168 hour period that begins at 12:01 a.m. local time on any Sunday and the postmark on the envelope in which such marketing assessment is remitted may be the basis for determining whether the marketing assessment was remitted timely;

(2) Paragraph (c) of this section, such assessments shall be remitted, within 10 days after the date such peanuts are marketed, and shall be remitted to the county FSA office that serves the county in which the farm is administratively located. Peanuts that are retained on the farm for seed or other use, shall be considered marketed at the time the certification of marketings is filed or due to be filed at the county FSA office, whichever is earlier;

(3) Paragraph (d)(1) of this section, such assessments shall be credited by the association to the appropriate account of the CCC and in accordance with instructions issued by the Executive Vice President, CCC; and

(4) Paragraph (d)(2) of this section, such assessment shall be paid at the time and in the manner prescribed in the applicable:

(i) Sales announcements for sales of farmers stock peanuts by CCC;

(ii) Sales announcement or other similar document issued by the

association for association sales of loan stocks of farmers stock peanuts; and

(iii) Storage contract for farmers stock peanuts purchased by a handler when peanuts are purchased by such handler in accordance with the ''immediate buyback'' provisions set forth in § 1446.309.

(f) *Penalties.* If any person fails to collect, pay or timely remit the assessment required by this section, the person shall be liable in addition to principal and interest, for a penalty determined by multiplying the quantity of peanuts involved by 10 percent of the per pound national average quota support rate for the applicable crop year.

10. § 729.317 is added to subpart C to read as follows:

§ 729.317 Increased marketing assessments.

(a) *Applicability.* If area quota pool losses are not otherwise covered by the offsets prescribed by part 1446 of this title, and the transfer of marketing assessments collected in accordance with provisions of this part, the marketing assessment for quota peanut producers shall be:

(1) Increased by an amount needed by CCC to cover such losses; and

(2) Collected as determined by CCC on all quota peanuts marketed in the next marketing year in the area covered by the quota pool which had the loss.

(b) *Insufficient collections.* If the amount of such increased assessments collected on the marketing of quota peanuts in any year is less than the amount needed to cover the accumulated net pool losses for any crop, there shall be an increased assessment in subsequent years until the amount needed is collected.

(c) *Excess collections.* If the increased amount of assessments, as provided in this section, collected on the marketing of quota peanuts for any year is greater than the amount needed for the purpose for which the collection is made, the excess amount shall be retained to offset any losses which may occur in quota pools within that marketing area in subsequent years.

(d) *Collection procedures.* Unless otherwise specified by CCC, the collection procedures for the increased assessments shall be as provided for in § 729.316 and the assessment rates of § 729.316 shall be increased accordingly.

Parts 719, 720, 790, 791, 793, and 796—[REMOVED]

11. Parts 719, 720, 790, 791, 793, and 796 are removed.

12. Chapter XIV is revised by adding part 1400 to read as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

Subpart A—General Provisions

Sec.

Subpart B—Person Determinations

Subpart C—Actively Engaged in Farming Determinations

Subpart D—Permitted Entities

Subpart E—Cash Rent Tenants

Subpart F—Foreign Persons

Authority: 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) All of the provisions of this part are applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The programs authorized by part 1412 of this chapter;

(2) Any program authorized by parts 1421 and 1427 of this chapter under which a gain is realized by a producer from repaying a marketing assistance loan for a commodity at a lower rate than the original loan rate established for the commodity, and any program that authorizes the making of a loan deficiency payment with respect to a commodity;

(3)(i) The program authorized by parts 704 and 1410 of this title with respect to the Conservation Reserve Program (CRP) rental payments made in accordance with a contract entered into on or after August 1, 1988. For contracts entered into before August 1, 1988, in accordance with such contracts, the person may elect to have the provisions of this part apply to such contract by notifying the county committee in writing of such election. Such election shall be irrevocable.

(ii) The regulations set forth at part 795 of this title are applicable to CRP contracts entered into before December 22, 1987, and to CRP contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (a)(3)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

(iv) With respect to inherited land, this part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the CRP contract at the time it is inherited by the individual.

(b) Only the provisions of subparts A and B are applicable to the Agricultural Conservation Program (ACP) authorized under part 701 of this title.

(c) This part shall be applied to the programs specified in paragraph (a)(2) of this section on a crop year basis; and with respect to the programs specified

in paragraphs (a)(1) and (3) and (b) of this section on a fiscal year basis.

(d) This part shall be used to determine whether individuals and entities are to be treated as one person or as separate persons for the purpose of applying the respective payment limitation provisions applicable to the programs specified in this section and to such other programs as may be provided in individual program regulations.

(e) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(f) Payments shall not be subject to the payment limitation provisions if they are made to:

(1) Public schools with respect to land owned by a public school district; or

(2) A State with respect to land owned by a State that is used to maintain a public school.

(g) The following amounts are the limitations on payments per person per applicable period for each payment.

Payment type	Limitation per program year or fiscal year
Production Flexibility Contract	[1] $40,000
Production Flexibility Contract	[2] 50,000
Marketing Loan Gain	[3] 75,000
Loan deficiency	
CRP	50,000
ACP cost-share	3,500
Non-Insured Crop Disaster Assistance Program (NAP)	100,000

[1] Annual payment amount.

[2] Amounts made in accordance with section 113(c) of the Federal Agriculture Improvement and Reform Act of 1996.

[3] The total of marketing loan gains and loan deficiency payments cannot exceed $75,000 per crop year.

§ 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 (herein referred to as ''State and county committees,'' 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 which has not been taken by such committee. The State committee may also:

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

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

(d) No delegation herein to a State or county committee shall preclude 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) The initial ''actively engaged in farming'' and ''person'' determinations shall be made within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(f) Initial determinations concerning the provisions of this part shall not be made by a county FSA office with respect to any farm operating plan that is for a joint operation with more than five members.

§ 1400.3 Definitions.

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

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

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

Active personal management. Active personal management is personally providing:

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

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

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

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

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

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

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

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

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

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

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

Lawful Alien. Any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I–551 or I–151).

(2) [Reserved]

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

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

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

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

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

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

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

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

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations listed in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is 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 conserving use and CRP acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, entity or joint operation in which the equipment is contributed by a member of the joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

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

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members.

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

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

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if listed as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family member. The term family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those individuals who do not make a significant contribution to the farming operation themselves.

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

Interest in a Farming Operation. An individual, entity or joint operation has an interest in a farming operation if the individual, entity or joint operation:

(1) Owns or rents the land;

(2) Has an interest in the agricultural commodities produced; or

(3) Is a member of a joint operation that either owns or rents the land or has an interest in the agricultural commodities produced.

Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust:

(1) That may not be modified or terminated by the grantor;

(2) In the corpus of which the grantor does not have any future, contingent or remainder interest; and

(3) If established after January 1, 1987, that 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. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland that meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or an entity, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

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

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

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

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

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

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

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

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

Payment. A payment includes:

(1) Payments made in accordance with part 1412 of this chapter;

(2) Loan gains and loan deficiency payments made in accordance with parts 1421 and 1427 of this chapter;

(3) CRP annual rental payments made in accordance with parts 704 of this title and 1410 of this chapter;

(4) ACP cost-share payments made in accordance with part 701 of this title;

(5) Non-Insured Crop Disaster Assistance Program (NAP) payments; and

(6) With respect to other programs, any payments designated in individual program regulations.

Payment, loan, or benefit. A payment, loan, or benefit made in accordance with the 1996 Act, the CCC Charter Act, or Subtitle D of the 1985 Act, which results in a direct expenditure by the CCC or any other agency of the Federal Government, including a payment made in accordance with part 1401 of this title. Such term does not include the establishment of contract acreages, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

Permitted entity. A permitted entity is an entity designated annually by an individual that is to receive a payment, loan, or benefit under a program specified in § 1400.1(a).

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust combined with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity, other than an individual or entity that is a member of a joint operation, to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

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

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity that is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered a person with respect to the commodities so marketed for producers.

Public school. A public school is 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.

Sharecropper. 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.

Significant contribution. A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution that has a value at least equal to 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or 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 individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

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

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution individually meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when viewed 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 provided in paragraphs (2) and (3) of this definition.

Substantial amount of active personal labor. Substantial amount of active personal labor means the provision of active personal labor in an amount that is the smaller of:

(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 such individual's or entity's commensurate share in the farming operation.

Substantial beneficial interest. A substantial beneficial interest in an entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity that are owned by an individual or entity directly or indirectly through such means as ownership of a corporation that owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total value of the farming operation. The total value of the farming operation is 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.

§ 1400.4 Indian tribal ventures.

An individual American Indian who receives payments through other than an Indian tribal venture is required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1400.1.

§ 1400.5 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of evading this part. Such acts shall 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 fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that a person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of sections 1001, 1001A, or 1001C of the 1985 Act such person shall be ineligible to receive payments under the programs specified in § 1400.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1400.6 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1400.1 an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(a) A share of the profits or losses from the farming operation that is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation that are at risk.

§ 1400.7 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability that arises therefrom. The provisions of this section shall be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.8 Equitable adjustments.

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

§ 1400.9 Appeals.

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

(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) shall 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.

§ 1400.10 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 have been assigned OMB control number 0560–0096.

Subpart B—Person Determinations

§ 1400.100 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, for the 1996 program or fiscal year, the status of an individual or entity on July 12, 1996, shall be the basis on which determinations are made in accordance with this part. Except as otherwise set forth in this part, for 1997 and subsequent years, the status of an individual or entity on April 1 of the applicable program or fiscal year, shall

be the basis on which determinations are made in accordance with this part.

(b) Actions taken by an individual or entity after the applicable status date set forth in paragraph (a) of this section, but on or before the final harvest date of the last contract commodity in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the applicable program or fiscal year. Actions taken by a person after the status date set forth in paragraph (a) of this section, but on or before the harvest of the last contract commodity in the area, shall be used to determine whether there has been a decrease in the number of persons for the applicable program or fiscal year.

§ 1400.101 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, limited liability partnership, limited liability company, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity that is owned by an individual or other entity shall be determined as of the status date set forth in paragraph (a) of this section. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last contract commodity in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

§ 1400.102 Joint operations.

Members of joint operations may be separately treated as a person in accordance with the requirements of this part. However, members of a joint operation may request to be jointly treated as one person for the purposes of this part.

§ 1400.103 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust that has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

§ 1400.104 Estates.

If the deceased individual had lived and would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

§ 1400.105 Husband and wife.

(a) With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(1) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse; or

(2) Except as provided in paragraph (b), do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive payments as a separate person from either spouse, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.

(b) With respect to any interest in an estate, for 2 program years after the program year in which the individual died, a husband and wife shall not be considered as having an interest in an entity to the extent resulting from such interest in an estate for purposes of determining persons.

§ 1400.106 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor, if the minor is a producer on a farm and the minor's parent or any court appointed person such as guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition the minor must:

(1) Have established and maintain a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Not live in the same household as such minor's parent and:

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

(ii) Have ownership of the farm vested in the minor.

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

§ 1400.107 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1400.108 Charitable organizations.

A charitable organization, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity that exercises control or authority over such organization.

§ 1400.109 Changes in farming operations.

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 shall be considered to be substantive changes in the farming operation:

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

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

(c) An increase through the acquisition of cropland not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation, if such cropland has planting history of an amount at least normal for the area;

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation;

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

Subpart C—Actively Engaged in Farming Determinations

§ 1400.201 General provisions for determining whether an individual or entity is actively engaged in farming.

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

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

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

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall 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; and

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

(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(1) A share of the profits or losses from the farming operation commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation that are at risk.

§ 1400.202 Individuals.

An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

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

(b) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1400.203 Joint operations.

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

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

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(b) 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(d), the members of the joint operation who make a significant contribution of active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

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

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

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

(b) The partners, stockholders, or members collectively make a significant 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. The combined beneficial interest of all the partners, stockholders, or members 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.

§ 1400.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

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

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

§ 1400.206 Estates.

(a) For 2 program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate 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) A combination of active personal labor and active personal management.

(b) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1400.207 Landowners.

A person who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. 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 such member of such joint operation.

§ 1400.208 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

§ 1400.209 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

§ 1400.210 Deceased and incapacitated individuals.

The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year or fiscal year, as applicable. If the individual dies or is incapacitated before a determination is made that the individual is ''actively engaged in farming,'' the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the determining authority information to verify that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be ''actively engaged in farming,'' the determining authority shall allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be ''actively engaged in farming'' for that year.

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

An individual or entity who does not satisfy all of the provisions of §§ 1400.202 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 shall not be considered to be actively engaged in farming.

§ 1400.212 Hybrid seed producers.

The existence of a hybrid seed contract for a producer shall not be taken into account when making an actively engaged in farming determination with respect to such producer. However, such producer must satisfy all other applicable provisions of this part.

Subpart D—Permitted Entities

§ 1400.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual may receive a payment under a program specified in § 1400.1(a) either directly or indirectly from no more than three permitted entities. An individual who receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual may only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1400.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted

entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee in writing, in each county in which they conduct a farming operation, of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) If an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2).

Subpart E—Cash Rent Tenants

§ 1400.401 Eligibility.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C 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 such land under a program specified in § 1400.1(a) shall be ineligible to receive any payment with respect to such cash-rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased; and

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts that reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) [Reserved]

Subpart F— Foreign Persons

§ 1400.501 Eligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

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

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

(i) The date the applicable program contract or agreement is executed by the 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 entity shall inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

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

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

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

§ 1400.502 Notification.

(a) Any 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 entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1400.501, are ineligible to receive a payment, loan and benefit.

(b) Such written notification must, if known, include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

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

PARTS 1497 AND 1498—[REMOVED]

13. Parts 1497 and 1498 are removed.

14. Part 1470 is redesignated as part 1401.

15. Part 1402 is revised to read as follows:

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

Sec.
1402.1 General
1402.2 Submission of offers, terms, and conditions
1402.3 Information
1402.4 Other Sales

Authority: 7 U.S.C. 7285; 15 U.S.C. 714b and 714c.

§ 1402.1 General

To facilitate trade in private trade channels, the Commodity Credit Corporation (CCC) will disseminate general sales offering information in the CCC Sales List which is published in press release form. The CCC Sales List will be revised and republished as necessary. CCC reserves the right to make any amendments deleting or adding to the provisions of the CCC Sales List or changing prices or methods of sale, including but not limited to, changes in the minimum prices and carrying charges. These lists are issued for the purpose of public information and do not constitute an offer to sell by CCC or an invitation for offers to purchase from CCC. The CCC Sales List will set forth either the prices or the pricing basis at which commodity holdings of CCC are available for sale for unrestricted or restricted use, and for export. Information concerning barter and credit will also be included. To be placed on the mailing list for the CCC Sales List press release, requests should be made to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.2 Submission of offers, terms, and conditions

CCC will entertain offers from prospective buyers for the purchase of any commodities on the CCC Sales List. Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among others, payment by cash or irrevocable letter of credit before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and, in sales for export, proof of exportation.

§ 1402.3 Information

The terms and conditions of sale with respect to any commodity appearing on the CCC Sales List will be furnished upon request addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.4 Other Sales

The general policy of CCC of making sales on a competitive or negotiated basis will continue to apply to all sales not covered by this announcement. Inquiries with respect to such sales may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

16. Part 1405 is revised to read as follows:

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.

Authority: 15 U.S.C. 714b and 714c.

§ 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 parts 1410, 1412, 1421, 1427, 1435, 1443, 1446, or 1464, 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.

17. Part 1412 is added to read as follows:

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

Subpart A—General Provisions

Sec.
1412.101 Applicability.
1412.102 Administration.

Authority: 7 U.S.C. 7201 et seq.; and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1412.101 Applicability.

The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) provides producers on farms with 1996 wheat, corn, barley, grain sorghum, oats, upland cotton and rice crop acreage bases the opportunity to enter into Production Flexibility Contracts with the Commodity Credit Corporation (CCC) for the years 1996 through 2002. Producers who participate in the program must fully comply with the terms of the production flexibility contracts and this part, and in return will receive production flexibility payments.

§ 1412.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by State and county Farm Service Agency (FSA) committees (herein called State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

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

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

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President (Administrator, FSA), or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

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

(f) A representative of CCC may execute a form CCC–478, ''1996 through 2002 Production Flexibility Contract'' only under the terms and conditions 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.

§ 1412.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Production Flexibility Program. The terms defined in parts 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Annual payment amount is the amount to be paid under a contract in effect for each fiscal year with respect to a contract commodity and equals the product of:

(1) 85 percent of the enrolled contract acreage multiplied by

(2) The payment yield multiplied by

(3) The payment rate except that the total of such payments shall not exceed $40,000 per person in accordance with part 1400 of this chapter.

Contract means forms CCC–478 and CCC–478 Appendix.

Contract acreage means a quantity of acres enrolled in a contract.

Contract commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

Contract payment means a payment made under this part pursuant to a production flexibility contract.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

Dry peas means Austrian, wrinkled seed, green, yellow, and Umatilla.

Eligible acreage means the crop acreage base that would have been established for a contract commodity in accordance with regulations in effect on January 1, 1996, at part 1413 of this chapter. If a crop has a designated crop-rotation crop acreage base for 1995, the 1996 crop acreage base established for such crop is determined by averaging planted and considered planted acreages determined in accordance with part 1413 of this chapter as it was in effect on January 1, 1996, taking into consideration the number of years in the most recent rotation cycle. The sum of the crop acreage bases for a farm cannot exceed the cropland for the farm, less cropland enrolled in the Conservation Reserve Program in accordance with parts 704 and 1410 of this title, except to the extent that such excess is due to an established practice of double cropping on the farm in accordance with regulations in effect as of January 1, 1996, at part 1413 of this chapter.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is not considered a grain sorghum.

Oilseeds means acreages of soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by CCC, other oilseeds, planted for harvest as seed, or volunteer acreages of such crops from which the seed is harvested.

Owner means an owner as defined in part 718 of this title and, only for purposes of enrolling a farm in the program authorized by this part or taking any subsequent action to maintain the eligibility of the farm, any agency of the Federal Government; however, such agency shall not be eligible to receive any payment made pursuant to such contract.

Payment rate means the annual payment rate determined and announced by CCC.

Payment yield means the payment yield established for the crop of a contract commodity for the farm in accordance with the regulations in effect on January 1, 1996, at part 1413 of this chapter. CCC shall adjust the payment yield to reflect the additional payments made in accordance with § 1413.15 of such regulations.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

§ 1412.104 Performance based upon advice or action of county or State committee.

The provisions of § 718.8 of this title are applicable to this part.

§ 1412.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Production Flexibility Contract Terms and Enrollment Provisions

§ 1412.201 Production flexibility contract.

(a) CCC shall offer to enter into a 7-year contract with an eligible producer on a farm having eligible acreage.

(b) A transfer (or change) in the interest of an owner or producer subject to a contract in the contract acreage covered by the contract shall result in the termination of the contract with respect to the acreage, unless the transferee or owner of the acreage agrees to assume all obligations under the contract. The termination shall be effective on the date of the transfer or change.

§ 1412.202 Eligible producers.

Producers eligible to enter into a contract are:

(a) An owner of a farm who assumes all or a part of the risk of producing a crop;

(b) 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 enters into the same contract;

(c) A producer (other than an owner) on an eligible farm who rents such farm under a lease expiring on or after September 30, 2002, in which case the owner is not required to enter into the contract;

(d) A producer (other than an owner) on an eligible farm who cash rents such farm under a lease expiring before September 30, 2002. The owner of such farm may also enter into the same contract. If the producer elects to enroll less than 100 percent of the crop acreage bases in the contract, the consent of the owner is required;

(e) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30, 2002, if the tenant declines to enter into a contract. In the case of an owner covered by this paragraph, contract payments shall not begin under a contract until the lease held by the tenant ends; and

(f) An owner or producer described in paragraphs (a) through (e) regardless of whether the owner or producer purchased catastrophic risk protection in accordance with part 1405 of this chapter.

§ 1412.203 Notification of eligible contract acreage.

The owner, and operator and all producers on a farm shall be notified in writing of the number of acres eligible for enrollment in a contract.

§ 1412.204 Reconstitutions.

Farms shall be reconstituted in accordance with part 718 of this title.

§ 1412.205 Reducing contract acreage.

(a) A permanent reduction of all or a portion of a farm's contract acreage or eligible contract acreage shall be allowed at the written request of the owner to the county committee on Form CCC–505.

(b) If the producers convert contract acreage to a non-agricultural commercial or industrial use, the contract acreage shall be reduced accordingly.

§ 1412.206 Planting flexibility.

(a) For the 1996 through 2002 crop years, any crop may be planted on contract acreage on a farm, except as limited in paragraph (c) of this section. Any crop may be planted on cropland in excess of the contract acreage.

(b) Contract acreage may be hayed or grazed at any time.

(c) Planting fruits and vegetables (except lentils, mung beans, and dry peas), is prohibited on contract acreage, except:

(1) A producer may double crop fruits or vegetables with a contract commodity in any region described in paragraph (d) of this section, in which case contract payments will not be reduced. Double cropping for purposes of this section means planting for harvest fruits or vegetables in cycle on the same acres with a contract commodity planted for grain or lint in a 12 month period under weather conditions normal for the region and being able to repeat the same cycle in the following 12 month period;

(2) On a farm that the county committee determines has a history of planting fruits or vegetables, in which case contract payments shall be reduced in accordance with paragraph (e) of this section;

(3) By a producer that the county committee determines a history of fruit or vegetables as the simple average of the sum of a specific fruit or vegetable planted for harvest by the producer during the years 1991 through 1995, excluding any year in which a fruit or vegetable was not planted, in which case contract payments shall be reduced in accordance with paragraph (e); or

(4) On a farm with a 1995 rotation designation crop acreage base established in accordance with part 1413 of this title as in effect on January 1, 1996, and the producers on the farm planted fruits or vegetables as a part of the rotation, in which case there will be no reduction in contract payments if the acreage of fruits and vegetables continue to be planted in the same rotation cycle with contract commodities, the acreage of fruits and vegetables is not increased, and an annual acreage report is filed for the farm.

(d) For purposes of this part, the following counties have been determined to be regions having a history of doublecropping contract commodities with fruits or vegetables. State committees have established the following counties as regions within their respective States:

Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arkansas

Ashley, Benton, Clay, Conway, Crawford, Cross, Drew, Franklin, Independence, Jackson, Lawrence, Lee, Lincoln, Little River, Logan, Miller, Perry, Poinsett, Pope, Prairie, Pulaski, Sebastian, and Woodruff.

Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Pima, Pinal, and Yuma.

California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office

None.

Connecticut

None.

Colorado

None.

Delaware

Kent, New Castle, and Sussex.

Florida

All counties.

Georgia

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brooks, Bryan, Bulloch, Burke, Calhoun, Candler, Catoosa, Chatham, Clay, Clinch, Coffee, Colquitt, Columbia, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Floyd, Forsyth, Franklin, Glascock, Grady, Hart, Houston, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Lauren, Lee, Liberty, Long, Lowndes, McDuffie, Macon, Miller, Mitchell, Monroe, Montgomery, Morgan, Peach, Pierce, Pike, Pulaski, Putnam, Randolph, Richmond, Schley, Screven, Seminole, Stephens, Sumter, Tattnall, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Turner, Twiggs, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, Wilkinson, and Worth.

Hawaii

None (no CAB's).

Idaho

None.

Illinois

Calhoun, Clark, Crawford, Edgar, Effingham, Gallatin, Iroquois, Kankakee, Lawrence, Madison, Marion, Mason, Monroe, St. Clair, Union, Vermilion and White.

Indiana

Allen, Bartholemew, Gibson, Hamilton, Knox, LaGrange, Lake, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

Iowa

Louisa.

Kansas

None.

Kentucky

Clinton and Wayne.

Louisiana

Avoyelles, Franklin, Grant, Rapides, and Morehouse.

Maine

None.

Maryland

Baltimore, Caroline, Carroll, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts

None.

Michigan

None.

Minnesota

None.

Mississippi

Calhoun, Carroll, Covington, Holmes, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, and Prentiss.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

Clark.

New Jersey

Burlington, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Salem.

New Hampshire

None.

New Mexico

Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Orange and Suffolk.

North Carolina

Beaufort, Bladen, Brunswick, Cabarrus, Camden, Carteret, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Franklin, Granville, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

None.

Ohio

Auglaize, Brown, Henry, Logan, Morgan, Muskingham, and Wood.

Oklahoma

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Kay, Kingfisher, Kiowa, LeFlore, Logan, 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.

Oregon

Benton, Linn, Morrow, and Umatilla.

Pennsylvania

Adams, Allegheny, Beaver, Bucks, Centre, Chester, Columbia, Cumberland, Delaware, Franklin, Lancaster, Luzerne, Mifflin, Montgomery, Montour, Northumberland, Schuylkill, Snyder, Union, Wyoming, and York.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Carroll, Claiborne, Coffee, Crockett, Dyer, Greene, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lincoln, Madison, Meigs, McMinn, Pickett, Rhea, Robertson, and Union.

Texas

Anderson, Armstrong, Atascosa, Bailey, Baylor, Briscoe, Brooks, Cameron, Castro, Cherokee, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dimmit, Duval, Floyd,

Foard, Frio, Gaines, Hale, Hall, Hartley, Haskell, Hidalgo, Jim Hogg, Jim Wells, Kinney, Kleberg, Knox, Lamb, Lubbock, Maverick, Medina, Moore, Motley, Nacogdoches, Oldam, Panola, Parmer, Pecos, Randall, Rusk, San Patricio, Starr, Swisher, Terry, Uvalde, Webb, Wilbarger, Willacy, Yoakum, Zapata, and Zavala.

Utah

Davis and Weber.

Vermont

None.

Virginia

Accomack, Augusta, Botetourt, Brunswick, Campbell, Charlotte, Chesapeake, Cumberland, Dinwiddie, Halifax, Hanover, Isle of Wight, King and Queen, King William, Lunenburg, Mecklenburg, Middlesex, Nelson, New Kent, Northampton, Nottoway, Page, Pittsylvania, Powhatan, Prince George, Richmond, Rockbridge, Rockingham, Shenandoah, Southampton, Stafford, Suffolk, Sussex, Virginia Beach, and Westmoreland.

Washington

Adams, Benton, Clark, Cowlitz, Franklin, Grant, Klickitat, Lewis, Skagit, and Yakima.

West Virginia

Mason and Putnam.

Wisconsin

Brown, Calumet, Chippewa, Columbia, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Kenosha, Marquette, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waushara, and Winnebago.

Wyoming

None.

(e) For each acre a producer plants to fruits or vegetables on contract acreage under paragraphs (c)(2) or (3) of this section, 1 acre will not be used in determining the contract payment. The calculation for this reduction is based on the contract crop with the lowest payment amount per acre. Reductions will be prorated among all producers based on each producer's share of the total payment for the farm. Such producers may adjust the reduction in payments as they agree upon.

(f) Fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya, (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cai lang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chickpeas/garbanzo beans, 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, chinese mustard, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kamut, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mongosteen, mar bub, melongene, mesple, mizuna, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, 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, and yam.

(g) Fruits or vegetables planted on contract acreage for green manure, haying, or grazing are not considered as planted to fruits or vegetables, but producers planting fruits and vegetables for such purposes shall pay a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the crop has not been harvested.

§ 1412.207 Succession-in-Interest to a production flexibility contract.

(a) A person may succeed to the contract if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners; or

(3) A foreclosure, bankruptcy, or involuntary loss of the farm after enrollment in a production flexibility contract.

(b) A succession in interest to the contract is not permitted if CCC determines that the change results in a violation of the landlord-tenant provisions set forth at § 1412.303, or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to a contract payment dies, becomes incompetent, or is otherwise unable to receive the contract payment, the CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner must inform the county committee of changes in interest by:

(1) August 31 of the current fiscal year, if producers on the contract remain the same, but payment shares change; or

(2) 30 days after the change is made on the farm but no later than August 31, if a new producer is being added to the contract.

(e) In any case in which payment has previously been made to a predecessor, such payment shall not be paid to the successor. If the predecessor refunds an advance contract payment, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

Subpart C—Financial Considerations Including Sharing Production Flexibility Payments

§ 1412.301 Limitation of production flexibility contract payments.

The sum total of annual contract payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

§ 1412.302 Contract payment provisions.

(a) A producer may request 50 percent of each fiscal year's contract payment as an advance payment.

(b) At the option of the producer, for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be made on December 15 or January 15, as requested by the producer. In order to receive an advance payment the producers on the

farm must be in compliance with all of the requirements of the contract at the time of the advance payment.

(c) A final contract payment shall be made not later than September 30 of each of the fiscal years 1996 through 2002.

(d) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the production flexibility payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

§ 1412.303 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to enroll in a contract and receive contract payments determined fair and equitable as agreed to by the producers on the farm and approved by the county committee.

(1) Producers 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.

(2) A lease will be considered a cash lease if the lessor receives only a sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease.

(4) If a lease provides for both a cash payment and a share of the crop or proceeds, the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(5) If the lease is a cash lease, the landlord is not eligible for a contract payment.

(6) For a lease providing both a cash payment and a share of the crop or proceeds, if the cash guarantee is less than the normal cash guarantee for the area, the lease shall be considered a share lease.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(1) A landowner may receive up to 100 percent of the contract payment if no lease exists with respect to the contract acreage. The leasing of grazing or haying privileges is not considered cash leasing.

(2) [Reserved]

(c) The county committee shall approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landowners, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) The county committee determines that the interests of tenants and sharecroppers are being protected; and

(3) That the division of payments is not done in a manner to circumvent the provisions of part 1400 of this chapter.

§ 1412.304 Provisions relating to tenants and sharecropper.

(a) Contract payments shall not 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 the program. 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 shall be refunded to CCC; or

(2) The landlord terminated a lease in violation of state law as determined by a state court.

(b) If the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment, have executed a contract no later than September 30 of that fiscal year and subsequently agree to the division of contract payment.

Subpart D—Contract Violations and Diminution in Payments

§ 1412.401 Contract violations.

(a) Except as provided in paragraph (b) of this section, if a producer subject to a contract violates a requirement of the contract specified in §§ 1412.201(6)(c), 1412.402, 1412.403, and 1412.405, the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of the violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) If the county committee determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, the county committee may require the producer subject to the contract either, or both of the following:

(1) Refund to CCC that part of the contract payments received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter; and

(2) If there is a violation of § 1412.206, accept a reduction in the amount of current and future contract payments that is equal to the sum proportionate to the severity of:

(i) Market value of the fruit and vegetables planted on each contract acreage; and

(ii) The contract payment for each such acre.

(iii) Producers who do not plant a crop on contract acreage must protect any such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

§ 1412.402 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, apply to this part.

§ 1412.403 Violations regarding controlled substances.

The provisions of § 718.12 of this title apply to this part.

§ 1412.404 Contract liability.

All producers receiving a share of the contract payment are jointly and severally liable for contract violations and resulting repayments.

§ 1412.405 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

§ 1412.406 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1412.407 Certification.

As a condition of eligibility for contract payments, the operator or owner must timely submit a report of fruit and vegetable acreage in accordance with part 718 of this title. If such operator or owner does not report all of the fruits and vegetables planted on contract acreage, the contract shall be terminated with respect to such farm unless the provisions of § 1412.40(b)(1) and (2) are applicable.

Subpart E—Production Flexibility and Conservation Reserve Programs

§ 1412.501 Timing for enrollment and termination of production flexibility contracts.

(a) At the beginning of each fiscal year, the Secretary shall allow an eligible producer on a farm with acreage enrolled in a Conservation Reserve Program contract in accordance with parts 704 or 1410 of this title that terminates after August 1, 1996, to enter into or modify an existing production flexibility contract if such land otherwise would have been eligible for enrollment under this part as of August 1, 1996.

(b) A production flexibility contract shall begin with the 1996 crop of a contract commodity or in the case of acreage that was enrolled in the Conservation Reserve Program, the date the production flexibility contract was entered into or modified to include the acreage previously subject to the Conservation Reserve Program contract.

(c) All contracts shall terminate on September 30, 2002, unless terminated at an earlier date by mutual consent of all parties.

(d) A contract for farms whose Conservation Reserve Program contract terminates after August 1, 1996, shall be signed by a producer no later than November 30 of the fiscal year following the fiscal year the Conservation Reserve Program contract is terminated.

(e) A Conservation Reserve Program contract that is terminated:

(1) In fiscal year 1996, if the effective date of the Conservation Reserve Program contract termination is earlier than August 1, 1996, and the land that was subject to the Conservation Reserve Program contract is enrolled in a production flexibility contract, the owner or producer is eligible to receive both the 1996 production flexibility contract payment and a prorated Conservation Reserve Program payment.

(2) In fiscal years 1997 through 2002, if a conservation reserve contract is terminated, and the land that was subject to the conservation reserve contract is enrolled in a production flexibility contract, the owner or producer may elect to receive either the production flexibility contract payments or a prorated Conservation Reserve Program payment, but not both.

PART 1413—[REMOVED]

18. Part 1413 is removed.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

19. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7231–7235, 7237; and 15 U.S.C. 714b and 714c.

20. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised, the subpart heading preceding § 1421.200 and § 1421.200 are revised, and §§ 1421.201 through 1421.217 are removed, as set forth below:

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of barley, corn, grain sorghum, oats, peanuts, rice, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive loans and loan deficiency

payments. All loans made under this subpart are nonrecourse unless as noted in § 1421.31. With respect to warehouse-stored loans for peanuts, loans shall be made in accordance with part 1446 of this chapter.

(b) Basic county loan rates, the schedule of premiums and discounts, and forms that are used in administering loans and loan deficiency payments for a crop of a commodity are available in State and county FSA offices (State and county offices, respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c)(1) Loans and loan deficiency payments shall be available as provided in this part with regard to barley, corn, grain sorghum, oats, oilseeds, and wheat produced in the United States.

(2) Loans and loan deficiency payments shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored loans shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this chapter, that are produced in the United States and that are also of a type specified in part 729 of this title.

(d) Loans and loan deficiency payments shall not be available with respect to 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.

§ 1421.2 Administration.

(a) The loan and loan deficiency payment program that is applicable to a crop of a commodity shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA) and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

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

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

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

(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 affect adversely the operation of the loan and loan deficiency payment program.

(f) A representative of CCC may execute loans and loan deficiency payment 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 before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1412, 1425, and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Loan deficiency quantity means the eligible quantity that was certified by the producer as eligible to be pledged as collateral for a loan, for which the producer elected to forgo obtaining the loan.

Loan quantity means the quantity on which the loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

§ 1421.4 Eligible producers.

(a) An eligible producer of a crop of a commodity shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) that:

(1) Produces such a crop 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;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1405, 1412, and 1446 of this title.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Loan or 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 or loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note 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)(1) Two or more producers may obtain a single joint loan with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity that is stored commingled in

a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities that are stored in an approved warehouse if the warehouse receipt that is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a loan on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act;

(ii) Has made a misrepresentation, with respect to acquiring a farm-stored loan or in the maintenance of the commodity pledged as security for a farm-stored loan; or

(iii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity that would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) Warehouse-stored loans may be made to a warehouse operator who, acting on behalf and with the authorization of a producer, tenders to CCC warehouse receipts issued by such warehouse operator for a commodity produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) An approved cooperative marketing association (CMA) may obtain a loan on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the CMA who are eligible to receive loans and loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart and in applicable loan and loan deficiency payment forms, the term producer includes an approved CMA.

(h) With respect to peanuts tendered to CCC for loan, a producer must also meet the provisions of part 1446 of this title. Before obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler with the State FSA office of the State in which the producer's farm is located.

(i)(1) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loan deficiency payments with respect to their share of the commodity that is stored commingled in a farm storage facility with commodities owned by other producers. All producers who store a commodity in a farm storage facility in which commodities for which a loan deficiency payment has been requested shall be liable for any damage incurred by CCC with respect to incorrect certification of such commodities in accordance with § 1421.16.

(2) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in an approved or unapproved warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

(3) Each producer who is a party to a joint loan deficiency payment will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan deficiency payment documents and in the applicable regulations in this subpart.

§ 1421.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the county office that, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved CMA must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the location designated by CCC. An eligible producer who produces a crop of barley, corn, grain sorghum, oats, rice, or wheat on a farm covered by a production flexibility contract shall be eligible for a loan on any production of that commodity. In the case of oilseeds, any production produced by an eligible producer shall be eligible for a loan. To receive loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: quota peanuts pledged as collateral for a farm-stored loan, barley, canola, flaxseed, oats, rapeseed, and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; or

(4) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, and sunflower seed.

(b)(1) To be eligible to receive loans or loan deficiency payments, commodities must be tendered to CCC by an eligible producer and must be eligible and in existence when approved by CCC. To be eligible to receive loans, commodities must also be stored in approved storage at the time of disbursement of loan proceeds. The commodity must not have been sold, nor any sales option on such commodity granted, to a buyer under a contract that provides that the buyer may direct the producer to pledge the commodity to CCC as collateral for a loan or to obtain a loan deficiency payment. Such commodities must also 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. Notwithstanding any other provision of this part, such commodities that contain vomitoxin levels of 5 or less parts per million or contain levels of more than 5 parts per million, may be eligible for a nonrecourse or recourse loan, respectively. Corn containing aflatoxin levels not exceeding 20 parts

per billion may be eligible for a nonrecourse loan.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality and quantity for peanuts:

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination may be paid by CCC. The grade and grading requirements that are used in administering loans and loan deficiency payments for the commodities in this paragraph are available in State and county offices.

(ii) With respect to a crop of mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall 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 loans and loan deficiency payments for the oilseeds in this paragraph are available in State and county offices.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of shelled corn;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be determined in tons and hundredths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of soybeans shall be 60 pounds of soybeans with no more than 1 percent foreign material;

(vii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage;

(viii) A bushel of wheat shall be 60 pounds of wheat free of dockage;

(ix) Quantities of farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be determined in whole units of 100 pounds of the respective commodity;

(x) A bushel of canola shall be 50 pounds of canola free of dockage;

(xi) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage;

(xii) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage;

(xii) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage;

(xiv) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage; and

(xv) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

(5) With respect to farm-stored loans and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

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

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

(i) 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 commodity 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, title, risk of loss, and beneficial interest in the commodity, as specified in 7 CFR part 1421, 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 CCC loan which is secured by such commodity; (2) the date the CCC claims title to such commodity; or (3) such other date as provided in this option

or

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity 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.

(3) If 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 CMA or its member CMA's, except as otherwise provided in this section. Commodities delivered to such a CMA shall not be eligible to receive loans or loan deficiency payments 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.

(d)(1) A producer may, before the final date for obtaining a loan for a commodity, re-offer as collateral for such a loan any commodity that had been previously pledged as collateral for a loan, except with respect to:

(i) Commodities that have been acquired in accordance with part 1401 of this chapter;

(ii) Commodities that have been redeemed at a rate that is less than the loan rate as determined in accordance with § 1421.25; and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) The commodity re-offered as security for the subsequent loan shall

have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment rate in accordance with § 1421.25 or, in lieu of receiving a loan receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC; or

(2) The storage location of the collateral that has not been otherwise disposed of and allow CCC access to such collateral; and

(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.

(f) Producers who redeem loan collateral or receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC before the final loan availability date of the crop year for such commodity following the crop year for which the loan or loan deficiency payment was made. Production evidence includes but is not limited to:

(1) Evidence of sales;

(2) Load summary or assembly sheets;

(3) Warehouse receipts issued by a warehouse that is approved according to § 1421.8(b) or by a warehouse that is not approved; and

(4) Quantities determined by measurement at CCC's discretion.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement or loan deficiency quantity for a loan deficiency payment based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such loan or loan deficiency payment application. A producer may obtain a separate loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity dates.

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities, except peanuts and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(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.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) 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; and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of the settlement for such collateral in accordance with § 1421.22;

(ii) Waive interest on the loan amount that accrued before the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest that accrues after the establishment of the claim shall not be waived; and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic loan rates.

(a) Basic loan rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) The basic loan rates for the wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed crops will be determined by CCC and made available at State and county offices.

(c)(1) With respect to all commodities except peanuts and rice, warehouse-stored loans shall be disbursed at levels based on the basic county loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the loan rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) that is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and that is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an approved warehouse. The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved CMA as defined in part 1425 of this chapter.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) Warehouse receipts tendered to CCC with respect to a loan or loan deficiency payment must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved 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. However, warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for loan if such warehouse is licensed and operating under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain and Rice Storage Agreement or the U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(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 (f)(1) of this section, additional commodity specific requirements shall be determined by CCC and are available at State and county offices and the Kansas City Commodity Office.

(g) If a warehouse receipt indicates that the commodity tendered for loan grades ''infested'' or ''contains excess moisture'', or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to be eligible for a loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows ''infested'' and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the ''infested'' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When 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 shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (g)(2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall 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 shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall 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; and

(*7*) Wheat: 13.5 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; and

(*6*) Sunflower Seed: 10.0 percent.

(h)(1) If, in accordance with 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 that are stored in an approved warehouse that is operating in accordance with a Uniform Grain and Rice Storage Agreement (UGRSA) may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouse operator be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) CCC-approved handling and storage rates that may be deducted from loan proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the grain 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.

(b) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges have been paid, CCC shall issue such payment to the producer. If the receipt shows that such charges have not been paid, the producer will assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for loans. The cost of filing and recording shall be paid for by CCC.

(b) If there are any liens or encumbrances on the commodity, 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 commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of commodity that has been redeemed in accordance with § 1421.25 at a rate that is less than the principal amount of the loan plus charges and interest.

(c) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. Chapter 6301), shall remit to CCC an assessment that shall be determined at the time CCC acquires the commodity, and shall be at a rate equal to one-half of 1 percent of the amount determined in accordance with § 1421.19.

(d) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from loan proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 [Reserved]

§ 1421.14 [Reserved]

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity pledged as collateral for a farm-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral for farm-stored loans.

§ 1421.16 Personal liability of the producers.

(a) When a producer obtains a commodity loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC–666, Farm Stored Loan Quantity Certification, when applicable, Form CCC–677, Farm Storage Note and Security Agreement, and Form CCC–678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for the loan; or

(ii) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with § 1421.20;

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes; and

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, 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.

(b) The violations referred to in paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments;

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1421.20, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral; and

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee in accordance with § 1421.20.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation. If CCC determines the producer:

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

(i) 10 percent of the loan rate applicable to the loan note or the loan

deficiency payment rate for the first offense; or

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

(2) Did not act in good faith 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 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed of for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid; and

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm, except as provided for in § 1421.17(b)(1); and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, FSA, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call any or all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without production evidence for an additional 12 month period.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (b), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Producers who have been refused a farm-stored loan under provisions of this section may apply for a warehouse-stored loan.

(k)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(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; and

(E) Liquidated damages assessed under paragraph (c) of this section.

(2) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by:

(i) The forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(ii) By repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loans.

(3) Notwithstanding any provisions 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 in accordance with § 1421.20, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC in accordance with § 1421.22.

(l) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(m) If the amount disbursed under a loan or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(n) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(o) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(p) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) may be waived as determined by CCC.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity that shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the loan percentage), as established by the State committee that shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e). Farm-stored loans may be made on less than the maximum quantity eligible

for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, such reduced quantity shall be the mortgaged quantity on the note and security agreement for the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage that does not exceed a percentage established by CCC or may apply quality discounts to the loan rate, 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 shall consider conditions in the State or areas within a State to determine if the loan percentage should be reduced below the maximum loan percentage or the quality discounts should be applied to the basic county loan rate to provide CCC with adequate protection. Loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions; percentages established or loan rates adjusted for quality in accordance with this section shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages or the necessity to apply quality discounts shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee when authorized on an individual farm, area, or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity;

(iii) The hazardous location of the storage structure, such as a location that exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity;

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors that relate to the preservation or safety of the loan collateral.

(b) If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer, when requesting a loan shall designate all structures that may be used for storage of the loan collateral. In such cases, the producer is not required to obtain prior written approval from the county committee before moving loan collateral from one designated structure to another designated structure. In all other instances, if the producer intends to move loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be evidenced on Form CCC–687–1 and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity that is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan that was transferred.

(d) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity that an eligible producer certifies in writing on Form CCC–666 for a loan and Form CCC–666 LDP or CCC–709, as applicable, for a loan deficiency payment, is eligible to be pledged as collateral and is otherwise available for loan or loan deficiency payment purposes.

(f) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan is less than the loan quantity, the county committee shall take the actions specified in § 1421.16.

§ 1421.18 Warehouse-stored loans.

(a) The quantity of a commodity that may be pledged as collateral for a loan shall be the quantity of any eligible commodity delivered to CCC for storage at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b)) To be eligible to be pledged as collateral for a loan, the commodity must not be Sample Grade and must meet the requirements of § 1421.5 and the commodity eligibility requirements, as determined by CCC. These

requirements are available at State and county offices.

§ 1421.19 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan 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 loan quantity. If a quantity in excess of 110 percent of the outstanding farm-stored loan quantity is shown on the warehouse receipt or other documents, the producer shall provide replacement warehouse receipts and delivery documents. If the warehouse receipt and such other documents applicable to the settlement are not replaced showing only the quantity eligible for delivery, CCC shall provide for such corrected documents and apply charges for such service, if any, to the producer's account as charges for settlement on the loan.

(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office that disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this chapter.

(c) If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a). Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer, when requesting a loan shall designate specific storage structures on Form CCC–677, in accordance with § 1421.17(b)(1). The producer is not required to request prior approval before moving loan collateral between such designated structures. Movement of loan collateral to any other structures not designated on CCC–677, or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to the administrative actions specified in § 1421.16. A producer may at any time obtain the release, in accordance with this section, of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan that is outstanding and charges plus interest; or

(2) If CCC so announces, an amount less than the principal amount of the loan 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 loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan before such removal does not exceed the maximum loan value of the quantity of the commodity remaining in storage after such removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall 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 the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25(a)(1)(ii) or (b)(2).

(b) CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2) on Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, provided the producer complies with all terms and conditions set forth on Form CCC–681–1. If a producer fails to repay a loan within the time period prescribed by CCC in accordance with the terms and conditions of Form CCC–681–1 and the commodity pledged as collateral for such loan has been delivered to a buyer in accordance with Form CCC–681–1, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2).

(c)(1) The producer may arrange with the county office for the release of all or part of the commodity that is pledged as collateral for a warehouse-stored loan at or before the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest; or

(ii) If CCC so announces, an amount less than the principal amount of the loan 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 loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the loan shall be released only to the producer. However, such receipts 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.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouse operator, CCC may, during the loan period, approve the reconcentration in

another CCC-approved warehouse of all or part of a commodity that is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges; or

(ii) If CCC so announces, an amount less than the principal amount of the loan 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 loan in accordance with § 1421.25.

(d) The note and security agreement shall not be released until the loan has been satisfied in full.

(e) If the commodity is moved on a non-workday from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable, of such commodity unless the producer notifies the county office the next workday that such commodity has been moved and such movement is approved by CCC.

§ 1421.21 [Reserved]

§ 1421.22 Settlement.

(a) The value of the settlement of loans shall 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 shall 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, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) With respect to recourse loans, the proceeds from the sale of the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the proceeds received from the sale of the commodity are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

(3) If CCC sells the commodity described in paragraph (a)(1) or (a)(2) in settlement of the loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC with respect to eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c)(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities, except peanuts, that are delivered from other than an approved warehouse, settlement shall 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.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 15 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut loan rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, a loan shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The loan rate for additional peanuts shall be used for all peanuts that do not grade Segregation 1 at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the under-marketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates.

(d) A producer may be required to retain and store the commodity that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC if CCC is unable to take delivery of the commodity. If CCC is unable to take delivery of the commodity within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the commodity to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for the commodity in effect at the delivery point where the producer delivers the commodity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery; or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

(e) When a producer is directed by the county office to haul the commodity for delivery, except aromatic rice, a greater distance than would have been necessary to make delivery to the producer's customary delivery point, as determined by CCC, the producer will be allowed compensation, as determined by the State committee at a

rate not to exceed the common carrier truck rate or the rate available from local truckers, for hauling the eligible commodity the additional distance. In determining the rate of payment for excess hauling, the State committee may establish reasonable mileage minimums below which producers will not receive compensation for hauling.

(f)(1) Producers may request trackloading for loan collateral where approved warehouse space is not available locally or where KCCO determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers before delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, regardless of the grade or quality of a commodity loaded into the car by any producer.

(2) A trackloading payment of 19 cents per bushel (or 31.66 cents per hundredweight in the case of sorghum, oilseeds, and rice, excluding aromatic rice) shall be made to the producer on an eligible commodity delivered to CCC under this subsection.

(g) If a farm-stored commodity is delivered in advance of the applicable loan maturity date as provided in § 1421.19, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm-stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the lesser of the UGRSA rate or the rate prepaid by the producer for the period of unearned storage.

(i) If a warehouse charges the producer for either the receiving charges or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the lesser of the UGRSA rate or the rate prepaid by the producer. The producer must furnish to the county office, written evidence signed by the warehouse operator that such charges have been paid.

§ 1421.23 Foreclosure.

(a) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the loan shall immediately vest in CCC. Upon maturity and nonpayment of farm-stored loan, title to the unredeemed collateral securing the loan shall vest in CCC upon demand. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value that such collateral may have in excess of the loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note and charges, plus 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 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 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.

(c) If a farm-stored commodity removed by CCC from storage is sold, the value of the settlement for the commodity shall be determined according to § 1421.22. If a deficiency exists, the amount of the deficiency may be setoff from any payment that would otherwise be due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC that is stored in an approved warehouse, producers must obtain official protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouse operator. Costs of such determinations shall not be paid by CCC.

(b) With respect to farm-stored wheat, the basic loan rate shall not be adjusted to reflect the protein content.

§ 1421.25 Loan repayments.

(a) Rice market repayments.

(1) A producer may repay a nonrecourse loan for a 1996 through 2002 crop of rice at a rate that is the lesser of:

(i) The loan rate and charges, plus interest determined for a crop; or

(ii) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be determined by the 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 shall be expressed in U.S. equivalent values f.o.b. 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.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (2). Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (the adjusted world price (AWP)), that is determined in accordance with paragraph (5), shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a) (2) and (3) and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall 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 changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the world value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the world market value of such broken kernels. The world market value of broken kernels shall 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 in accordance with (a)(5)(ii) shall 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% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) shall 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 in accordance with paragraph (a)(5)(iv) shall 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:

(*1*) An estimated cost of milling rough rice; and

(*2*) An estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. eastern time each Tuesday, but may be announced more frequently, as determined by CCC, continuing through the later of:

(A) The last Tuesday of July 2003; or

(B) The last Tuesday of the latest month the 2002-crop rice loans mature.

(ii) In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3 p.m. eastern time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(7) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, between 2 p.m. eastern time and the time of the world price announcement, CCC will not accept repayments of rice loans at a world market price level not previously locked-in, and applications for lock-in of a rice loan repayment rate.

(b) For 1996 through 2002 crops of barley, corn, grain sorghum, oats, wheat, and oilseeds, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for such crop; or

(2) The alternative repayment rate for barley, corn, grain sorghum, oats, wheat, and oilseeds.

(c) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the previous day's market prices at appropriate U.S. terminal markets as determined by CCC, adjusted to reflect quality and location for each crop of a commodity as follows:

(1) On a weekly basis in each county for oilseeds, except soybeans; and

(2) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at a price determined by CCC but, for the applicable type, not less than 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at not less than 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown;

(2) For edible export, at a price determined by CCC but not less than any minimum sales price determined and announced by CCC;

(3) The 1996 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton; and

(4) For crushing (either domestic or export), at a price determined by CCC but not less than the additional loan rate for the applicable type.

(b) For purchases on or before January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) For purchases after January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a)(1) Each producer-handler shall maintain records as required in part 1446 of this chapter for all additional peanuts that are purchased and sold for which an ASCS–1007, Inspection

Certificate and Sales Memorandum, is issued.

(2) The following records shall be maintained for all peanuts purchased from CCC that are not inspected. Each producer-handler shall maintain records that show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner that will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b)(1) The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts that were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) With respect to additional peanuts on which ASCS–1007 is issued, the producer-handler shall be subject to all provisions in part 1446 of this chapter relating to the disposition of additional peanuts.

(c) The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) The producer-handler is subject to penalties as provided in part 1446 of this chapter with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) File and request payment on Form CCC–666 LDP, unless the producer enters into an agreement according to paragraph (h), for a quantity of an eligible commodity; and

(4) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer submits a completed request for a loan deficiency payment to the county office. When such request is for rice and the request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases for rice where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c), by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1400 of this chapter.

(f) CCC will make the loan deficiency payment in accordance with paragraph (d). Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity. If such production evidence is provided, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

(g) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2 p.m. eastern time and the time of the world price announcement.

(h) If the producer enters into an agreement with CCC on or before the date of harvesting a quantity of an eligible commodity and the producer has the beneficial interest in such quantity as specified in accordance with § 1421.5(c) on the date the commodity was harvested, the loan deficiency payment rate applicable to such commodity would be the loan deficiency payment rate based on the date the commodity was delivered to the processor, buyer, warehouse, or CMA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1421.5.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office that made the loan or loan deficiency payment, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture corn and high moisture grain sorghum. Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a). Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(c) The value of the collateral for settlements described in paragraphs (a) and (b) shall be determined by CCC according to § 1421.22.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less that are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 through 1995 Crops

§ 1421.200 Administration.

The Wheat and Feed Grain Farmer Owned Reserve (FOR) Program was not reauthorized by Congress for the 1996 crop. Effective for the 1990 through 1995 crops, the regulations setting forth the applicable terms and conditions for the Wheat and Feed Grain Farmer Owned Reserve (FOR) Program can be found in the regulations published in 7 CFR Part 1421 as of January 1, 1996, shall be applicable for any outstanding FOR loans on or after April 4, 1996.

Subpart—Rice Marketing Certificate Program [Removed]

21. The subpart consisting of §§ 1421.320 through 1421.324 is removed.

* * * * *

22. Part 1425 is revised to read as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

§ 1425.1 Applicability.

This part sets forth the terms and conditions that a Cooperative Marketing Association (CMA) must meet to obtain from CCC marketing assistance loans (loans) and loan deficiency payments on behalf of its members for the 1996 and subsequent crops of a commodity. A CMA meeting such terms and conditions may obtain loans and loan deficiency payments with respect to any crop of an eligible commodity for which a loan and loan deficiency payment program is in effect.

§ 1425.2 Administration.

On behalf of CCC, the FSA will administer the provisions of this part under the general direction and supervision of the Deputy Administrator. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.

The following definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable except where those definitions conflict with the definitions in this section.

Active member means a member who has utilized the services offered by a CMA 1 of the 3 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 means a CMA that has been approved by CCC to participate in loan and loan deficiency payment programs authorized with respect to one or more authorized commodities.

Authorized commodity means those commodities for which an approved CMA may apply for loans, including barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, seed cotton, sorghum, soybeans, sunflower seed, and wheat.

Eligible commodity means a commodity that meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title that is delivered to, or that is acquired by, a CMA.

Member means a person who has fully paid for the membership stock or earned equity credits; was accepted by the CMA; and is entitled to all membership rights including voting and holding office except where the law of the State in which the CMA is incorporated provides for stock subscribers as members but does not allow them to hold office.

§ 1425.4 Approval.

(a) For a CMA to participate in a loan program with respect to the 1996 through 2002 crops of authorized commodities, a CMA must submit an application for approval with respect to such authorized commodities to CCC. An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the CMA including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the CMA;

(3) A copy of the articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities, and any other document that is requested by CCC with respect to the CMA's methods of conducting business that an official of the CMA has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) from each director, officer, and principal employee;

(5) Resolutions made by the CMA board of directors that provide that the CMA will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any CMA transactions that have occurred either in the year before the initial application for approval is submitted, or are contemplated by the CMA as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which loans are obtained will be distributed as provided for in § 1425.18; and

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the CMA determined by CCC to be necessary to act upon the application for approval.

(b) An approved CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The CMA's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the CMA owned by active members, inactive members, and others, and the un-allocated equity in the CMA;

(5) The names of any members who own in excess of 10 percent of the equity of the CMA and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the CMA to CCC as security for a loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for loan during the prior year; and

(9) A statement of any CMA transactions that either have occurred in the CMA's prior fiscal year of operations or are contemplated to occur in the CMA's current fiscal year as provided for in § 1425.12.

(c) An approved CMA shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the CMA;

(2) Any resolutions affecting loan operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the CMA.

(d) Approved CMA's must submit revised applications as required by this section every 5 years, or more often if CCC requests.

(e) CMA's applying for approval to participate in the loan program for cotton shall execute Form CCC-Cotton G, Cotton Cooperative Loan Agreement, with CCC.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets, financial or commercial operations, or information concerning the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a loan program or such information is required to be disclosed by law.

§ 1425.6 Approved CMA's.

(a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain loans and loan deficiency payments.

(b) CCC may approve a CMA to participate in a loan program with respect to the 1996 through 2002 crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c)(1) A CMA may be conditionally approved if CCC determines that it has substantially met all the requirements of this part, and the failure to meet the remaining requirements is due to reasons beyond the control of the CMA and not due to the CMA's negligence; and

(2) Such CMA must agree in writing to meet all requirements for approval set forth in this part within the time period specified by CCC. When a CMA can only comply with the regulations by amending its articles of incorporation or bylaws at a membership meeting, CCC may accept a board of directors' resolution agreeing to recommend to the members, at the next meeting of the members, the required changes to the articles of incorporation or bylaws as compliance with the requirements for approval for purposes of this section. Board resolutions in which the CMA agrees to comply with other provisions of this part may be accepted by CCC as compliance with the requirements for approval for purposes of this section.

(d) A CMA is approved to participate in a loan program for an authorized commodity until such time as the CMA's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) An approved CMA may be suspended by CCC from further participation in a loan or loan deficiency payment program if CCC determines that the CMA or a member CMA, as specified in § 1425.19:

(1) Has not operated in accordance with the conditions specified in such CMA's application for approval;

(2) Has not complied with applicable regulations; or

(3) Has failed to correct deficiencies noted during an administrative review or an audit of the CMA's operations with respect to a loan program.

(b) Such suspension may be lifted upon the receipt of documents indicating that the CMA has complied with all requirements for approval. If such documents are not received within 1 year from the date of the suspension, the CMA's approval for participation in a loan program will terminate automatically.

(c)(1) CCC may terminate the approval of the CMA's ability to pledge commodities as collateral for CCC loans or loan deficiency payments by giving the CMA written notice of such termination.

(2) An approved CMA may at anytime, upon written notice to CCC, voluntarily terminate the CMA's participation in a loan program, provided that the CMA does not have any outstanding loans at the time of voluntary termination.

(d) Ten days after the date CCC suspends or terminates the approval of a CMA to participate in a loan program or anytime thereafter, CCC may, on demand, call all outstanding CCC loans made to the CMA. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

§ 1425.8 Ownership and control.

(a) All approved CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must establish that its active members own more than 50 percent of the allocated equity of the CMA. Such ownership equity shall be in the form of stock, revolving fund certificates, capital, retains book credits, or other capital interests issued by the CMA. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to each active member:

(1) The allocated equity held by any active member who owns more than 10 percent of the CMA's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the CMA unless the member is obligated to repay the loan within 1 year.

(c) The organization and operation of the CMA shall be under the control of its active members. A CMA shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) All directors must be:

(1) Active members of the CMA;

(2) Representatives of active members who are also employed as a farm manager or its equivalent (including an officer of a CMA or a partner in partnership); or

(3) Officers, employees, or active members of an active member CMA; and

(4) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) An applicant or an approved CMA not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a loan program if the CMA is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the CMA can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

(a) The articles of incorporation, articles of association, or the bylaws of the CMA shall comply with each of the following requirements:

(1) The CMA shall hold an annual meeting of members or delegates at one or more locations within its operating area that will afford a reasonable opportunity for all members or their delegates to attend and participate;

(2) The CMA shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates; and

(3) The CMA shall admit to membership every applicant who applies for admission for the purpose of participating in the activities of the CMA, and is eligible for membership under the statute incorporating the CMA.

(b) A CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

(c)(1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors or by members when nomination by members is authorized in the CMA's articles of incorporation or bylaws.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(d) The election of directors, delegates, and officers shall be by ballot when there are two or more nominees for a position, or there are more nominees than there are positions to be filled.

(e) Each member of the CMA shall have a single vote except that CCC may approve another voting method that will adequately protect the ownership and control interests of the members of the CMA.

(f) Voting by proxy shall be prohibited, except if a CMA:

(1) Determines that voting by proxy is necessary to amend the CMA's articles of incorporation, articles of association, or bylaws; and

(2) Establishes, to the satisfaction of CCC, that the law of the State in which the CMA is incorporated permits voting by proxy, but does not permit members to vote by mail, with respect to such issue.

(g) Each member of the CMA shall annually be given a summary financial statement of the CMA that is based on an annual audit conducted by a certified public accountant.

§ 1425.10 Financial condition.

(a) An approved CMA must be financially able to make financial advances to its members and to market commodities of such members.

(b) The factors that will be considered in determining the financial condition of a CMA include:

(1) The ability of the CMA to meet current obligations, including the expenses of marketing the commodities on behalf of its members; and

(2) The ability of the CMA to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions.

(c) The CMA shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of such units of commodity for which the CMA is approved, or requesting approval, to participate in loan programs and handled by the CMA during the preceding marketing year, or, if the CMA is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year.

(1) If the amount of the net worth of the CMA is between 34 and 99 percent of the amount computed in accordance with paragraph (c), and the CMA is determined by CCC to be otherwise financially sound, CCC may determine that such CMA meets the requirements of this section. Such a determination by CCC may be made if:

(i) The board of directors of the CMA agrees to retain capital in the amount set forth in table 2 with respect to each unit of the commodity delivered to the CMA until the net worth of the CMA is at least equal to the amount computed in accordance with paragraph (c), and

(ii) The CMA agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the CMA.

(2) The failure to carry out such capital retention agreements shall be grounds for suspending a CMA approval.

Table 1

Commodity	Unit	Amount per unit
Barley	Bushel	0.13
Canola	Hundredweight	0.62
Corn	Bushel	0.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	0.62
Mustard Seed	Hundredweight	0.62
Oats	Bushel	0.13
Rapeseed	Hundredweight	0.62
Rice	Hundredweight	0.52
Safflower	Hundredweight	0.62
Seed Cotton (lint basis).	Pound	0.008
Sorghum	Hundredweight	0.19
Soybeans	Bushel	0.43
Sunflower Seed	Hundredweight	0.62
Wheat	Bushel	0.15

Table 2

Commodity	Unit	Amount per unit
Barley	Bushel	0.07
Canola	Hundredweight	0.32
Corn	Bushel	0.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	0.32
Mustard Seed	Hundredweight	0.32
Oats	Bushel	0.07
Rapeseed	Hundredweight	0.32
Rice	Hundredweight	0.26
Safflower	Hundredweight	0.32
Seed Cotton (lint basis).	Pound	0.004
Sorghum	Hundredweight	0.10
Soybeans	Bushel	0.22
Sunflower Seed	Hundredweight	0.32
Wheat	Bushel	0.08

(d) For the purposes of paragraphs (b) and (c), the net worth of the CMA shall be reduced by the value of the amount of any assets or funds that are not reflected as a liability of the CMA in the financial statement of the CMA and that are:

(1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the CMA; or

(2) Deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the CMA.

§ 1425.11 Operations.

(a) A CMA shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the CMA is so organized and staffed by individuals employed directly by the CMA that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a CMA cannot satisfactorily establish that it can provide an effective marketing operation for its members, the CMA may enter into a marketing agreement with another CMA to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the CMA acquiring the marketing service and the marketing agreement such CMA has entered into with its members

provide the necessary authority to enter into such agreement;

(3) The CMA acquiring the marketing service is a member of the CMA that will provide the marketing service; and

(4) The CMA that will provide the marketing service has been approved under this part to obtain loans for such commodity.

(c) Any marketing agreement entered into by a CMA in accordance with the provisions of paragraph (b), must, as determined by CCC:

(1) Adequately protect the ownership and control interests of the CMA members;

(2) Be in the best interest of the members of the CMA acquiring the service; and

(3) Require that all proceeds from the marketing operation be distributed as provided in § 1425.18.

§ 1425.12 Conflict of interest.

(a) The CMA shall not be approved for participation in loan programs unless CCC determines that the CMA's transactions, if any, that are of a kind described in this section, have not operated and will not operate to the detriment of members of the CMA.

(b) The CMA shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions of the CMA (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) with the following persons that differ from transactions entered into by the CMA with its general membership:

(1) Any director, officer, or principal employee of the CMA, or any of their family members;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any CMA in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the CMA; or

(5) Any business entity in which an agent, director, officer or employee of the CMA was an agent, director, officer or employee of such business entity.

(c) The CMA shall also submit a statement as to whether any transactions of the kind described in paragraph (b) are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the CMA shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) The CMA shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their family members with persons who engage in any business relating to a commodity for which the CMA is approved to obtain loans. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The CMA must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which a loan is obtained on any quantity of the commodity in such pool.

(b) A CMA may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved CMA, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed 2 crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the CMA, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the CMA's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of an authorized commodity that is acquired by, or delivered to, the CMA for marketing must be produced by its members in order for the CMA to obtain a loan for such crop. CCC may, for a period not to exceed 2 years, waive such requirement for a CMA if:

(a) The quantity of such crop acquired by the CMA for marketing, from its members, has a value greater than the value of the quantity acquired or received from nonmembers for marketing;

(b) The CMA can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the CMA; and

(c) The CMA has a plan, approved by CCC, that CCC determines to be in the CMA members' best interest and will bring the CMA into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved CMA shall have the authority to pledge as collateral for a loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§ 1425.16 Payment limitation.

Approved CMA's shall monitor marketing loan gains, loan deficiency payments, and other payments they receive from CCC on behalf of their members and ensure that the sum of the amounts received for each member does not exceed the member's payment limitation determined in accordance with part 1400 of this chapter.

§ 1425.17 Eligible commodity and pooling.

(a) A CMA may establish separate pools as needed for quantities of a commodity.

(b) Loans will be made available to approved CMA's with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (e) and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans if:

(1) All of the commodity included in the pool is eligible for loans, except as provided in paragraph (d);

(2) The eligible commodity in such pool was delivered to the CMA for marketing for the benefit of the members of the CMA by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.18.

(3) Except with respect to a quantity of a commodity pledged as collateral for a loan and that is redeemed within 15 work days from the date the CMA receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the CMA with respect to such commodity in accordance with § 1425.18(a).

(d) If CCC determines that a CMA has inadvertently included in a pool a quantity of commodity that is ineligible for loan because of grade, quality, bale weight or repacking in the case of cotton, or other factors, the remaining quantity of commodity shall remain eligible for loan.

(e) Loans and Loan Deficiency Payments will be available to the CMA for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of:

(1) The quantity of an eligible commodity received from members of the CMA; or

(2) the quantity of commodity that is in the CMA's inventory.

(f) The CMA must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's pool.

(h) Except as provided in paragraph (c)(2), loans will be available to the CMA for the quantity of the eligible commodity stored identity preserved in an approved warehouse that was received from members of the CMA and that is in the CMA's inventory at the time the commodity is pledged as collateral for a loan.

(i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(j) Commodities pledged as collateral for CCC loans shall be free and clear of all liens and encumbrances based on an approved CMA's financial agreements or the CMA shall obtain a completed Form CCC–679, Lien Waiver. Approved CMA's shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan is obtained with respect to any quantity of a crop of a commodity that has been pooled, allocations by the CMA of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(l)(1) Any losses incurred by the CMA in the marketing of a crop of a commodity for which a loan has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which a loan was obtained.

(2) Except as provided in paragraph (l)(3), losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which a loan is obtained.

(3) CCC may authorize an approved CMA to carry forward losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the loan program.

(4) The authorization referred to in paragraph (l) will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved CMA and will be continued on the condition that the approved CMA remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(5) Factors that will be considered in determining whether to approve such a plan include, but are not limited to, the following:

(i) The stability of the membership and participation between affected pools;

(ii) the financial condition of the CMA; and

(iii) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(6) The plan submitted by the CMA must include the following:

(i) A provision for notifying existing and new members of the CMA of the plan to deduct eligible pool losses from subsequent eligible pool gains; and

(ii) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(7) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan that has been approved by CCC under the criteria specified in paragraph (e)(3).

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes available loans or loan deficiency payments with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or loan deficiency payments shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in the pool less any authorized charges for services performed or paid by the CMA that are necessary to condition the commodity or otherwise make the commodity eligible for loans or loan deficiency payments. Except with respect to commodities that are pledged as collateral for a loan and that are redeemed within 15 work days from the date the CMA receives the loan proceeds from CCC, such proceeds shall be distributed within 15 work days from such date. Loan deficiency payments received from CCC shall be distributed within 15 work days of receipt from CCC.

(2) Any advances by the CMA to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or used to obtain a loan deficiency payment with CCC may be credited by the CMA against the distribution required in paragraph (a)(1).

(b)(1) If loans or loan deficiency payments are obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in such pool.

(2) Except as provided in paragraph (b)(3), all proceeds from an eligible pool for which a loan has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from loans made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(5) When notified by CCC that pool distributions to a member of any eligible pool must be reduced for a program year, farm, or crop, CMA shall refrain from making such pool distributions and shall, if appropriate, reimburse CCC for such distributions.

(c) If a CMA has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the CMA and has given notice of distribution both by publication and personal letter addressed to such members, the CMA may provide, to the extent permitted by

the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the CMA;

(2) The CMA, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1), has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the CMA) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1); and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1).

§ 1425.19 Member CMA's.

(a) Except as provided in paragraph (c) for a CMA to obtain loans or loan deficiency payments for any quantity of an eligible commodity delivered by a member CMA or for a CMA to obtain loans for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member CMA, the CMA and such member CMA must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member CMA must be produced by the members of such member CMA.

(2) The member CMA must be authorized to:

(i) Sell the commodity;

(ii) Pledge such commodity as collateral for a loan;

(iii) Place a lien on such commodity; and

(iv) Deliver such commodity to the CMA for marketing.

(3) The CMA must either:

(i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member CMA to meet the requirements of this part; or

(ii) Determine and certify annually to CCC that each such member CMA meets the requirements of this part.

(b) The CMA shall determine and certify annually to CCC that its member CMA's that are not subject to paragraph (a) are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) An approved CMA is required to meet only the provisions contained in paragraphs (a) (1) and (2) with respect to a member CMA for whom the member CMA markets the production of the member CMA's members in accordance with § 1425.11(b).

§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) An approved CMA and its member CMA's shall maintain a record that shows the quantity of commodity that is received from each of its members and nonmembers, the date received, the eligibility status for loans of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) The CMA shall maintain a record that shows each quantity of commodity that is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c), inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) Commodities that are processed. The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) Commodities not processed. The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the approved CMA, member CMA's, and subsidiaries, shall be maintained for a period of 5 years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) CCC shall have the right at any time after an application is received, 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, bylaws, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) Approved CMA's shall annually provide CCC with a report to applicable county FSA offices. The report shall include all eligible and ineligible commodity receipts by FSA farm number for each member.

(b) Approved CMA's shall at least annually report by commodity and by crop the marketing loan gains, loan deficiency payments, and any other CCC program payments received on behalf of each producer member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§ 1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

PART 1427—COTTON

23. Part 1427 is amended by designating the subparts and revising the headings in the first column to read as shown in the second column;

Old subpart	New subpart
Subpart—Cotton Loan Program Regulations	Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.
Subpart—Upland Cotton First Handler Marketing Certificate Program Regulations.	Subpart B—Regulations for the Upland Cotton First Handler Marketing Certificate Program.
Subpart—Upland Cotton User Marketing Certificate Program Regulations.	Subpart C—Regulations for the Upland Cotton User Marketing Certificate Program.

Old subpart	New subpart
Subpart—Seed Cotton Loan Program Regulations	Subpart D—Regulations for the Recourse Seed Cotton Loan Program.
Subpart—Standards for Approval of Warehouses for Cotton and Cotton Linters.	Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters.

24. The authority citation for part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

25. Subpart A is revised to read as follows:

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs

Sec.

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of upland cotton and extra long staple cotton. These regulations set forth the terms and conditions under which the nonrecourse cotton loan program and the loan deficiency payment program shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions shall be set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer to receive loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the nonrecourse cotton loan and loan deficiency payment programs are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Loans and loan deficiency payments shall 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.

§ 1427.2 Administration.

(a) The nonrecourse loan and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA), or a designee and shall be carried out by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the cotton loan and loan deficiency payment programs or from reversing or modifying any determination made by the 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 nonrecourse cotton loan or loan deficiency payment programs.

(f) A representative of CCC may execute loan note and security agreements and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, is null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter which has executed Form CCC-Cotton G, Cotton Cooperative Loan Agreement.

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.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of ''upland cotton'' and ''extra long staple (ELS) cotton'' in this section, respectively, and excludes cotton not meeting such definitions.

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) Sea Island;

(3) Sealand;

(4) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(5) Any other variety of cotton in which one or more of these varieties predominate.

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 loans means a nonrecourse loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loans means a nonrecourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

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

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Lint cotton means cotton which has passed through the ginning process.

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

Servicing agent bank means the bank designated as the financial institution for a CMA or loan servicing agent.

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 which one or more of these varieties predominate.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, that is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

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

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and parts 1405 and 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by 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) Two or more producers may obtain a single joint loan or loan deficiency payment with respect to the eligible cotton if the cotton is jointly owned by such producers. 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) Loans may be made to a warehouse operator who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouse operator on cotton produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A CMA may obtain loans and loan deficiency payments on eligible cotton on behalf of their members who are eligible to receive loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term ''producer'' includes a CMA.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and mailed or delivered to applicable county office or loan servicing agent within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the servicing agent bank within the period of loan availability.

(b) For a bale of cotton to be eligible for a loan or loan deficiency payment, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and in good condition at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f);

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

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

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

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

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

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

(9) Weigh at least 325 pounds net weight;

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

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

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

(11) Be ginned by a ginner:

(i) Who 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) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) and;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title.

(c) In addition to the requirements of paragraph (b), for ELS cotton the bale must:

(1) Be a Grade and staple length specified in the schedule of loan rates for ELS cotton;

(2) Not have a micronaire reading of 2.6 or less; and

(3) Not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter.

(d) In addition to the requirements of paragraph (b), for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(4) Have a strength reading greater than 18 grams per tex, rounded to whole grams;

(5) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(6) Have a extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton; and

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

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

(i) 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 cotton 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, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, 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 loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes Form CCC–605, Designation of Agent. Such designation:

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

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

(C) Expires upon maturity of the loan;

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

(E) Must be presented at the time the loan is repaid at the county office or loan servicing agent where the loan originated if the agent or subsequent agent exercises any authority granted by the producer; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC–605. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If loans or loan deficiency payments are made available to producers through a CMA, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or

sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

§ 1427.6 Disbursement of loans.

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

(1) County offices;

(2) Loan servicing agent; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC–810.

(b) Loan proceeds may be disbursed by CCC or a servicing bank agent bank to CMA's.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a) (1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed.

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

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

§ 1427.8 Amount of loan.

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

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

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

(d) CCC will not increase the amount of the loan made with respect to 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 with respect to the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

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

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

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

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

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

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

§ 1427.10 Approved storage.

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

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

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

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

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

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

§ 1427.11 Warehouse receipt and insurance.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise are acceptable to CCC. Any open yard endorsement on the warehouse receipt must have been rescinded. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Show that the cotton is covered by fire insurance; and

(4) Be dated on or prior to the date the producer signs the note and security agreement.

(b) Warehouse receipts, in accordance with § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is

not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

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

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

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

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

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

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

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

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

§ 1427.12 Liens.

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

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement and shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with § 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. Chapter 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the period the cotton was pledged as collateral for the loan; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, 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 loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency

payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

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

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

(2) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC–825 shall show the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(3) Upon receipt of the loan or loan deficiency payment documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

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

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(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 county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

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

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

(1) The county office, loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(2) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(3) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office, loan servicing agent, or CMA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms CCC-Cotton A and CCC-Cotton A–1, collateral warehouse receipts and related documents will be maintained in the custody of CCC, the county office, the loan servicing agent, or the servicing agent bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages in accordance with paragraph (e); and

(vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) 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 delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the

regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

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

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

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

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

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

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

(2) Assess liquidated damages in accordance with paragraph (e);

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages in accordance with paragraph (e); and

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and with respect to a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g).

(i) If the loan is called in accordance with 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 in accordance with § 1427.19 or utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (e) may be waived as determined by CCC.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC–605 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 in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized on Form CCC–605, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

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

(g) Notwithstanding any other provision of this section, CCC will not accept repayment of upland cotton at a rate based on the adjusted world price beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such loan repayments 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 in accordance with § 1427.25(e).

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

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

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

§ 1427.20 Handling payments and collections not exceeding $9.99.

To avoid the administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

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

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

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office or loan servicing agent which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1996 through 2002 crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton loan eligibility requirements in accordance with this subpart;

(2) Agree to forgo obtaining such loans;

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on Form CCC–Cotton AA, Form CCC–709, or other form approved by CCC;

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

(5) Provide classing information for such quantity in accordance with § 1427.9; and

(6) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the request is received by the county office, loan servicing agent, or servicing agent bank.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(f) 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 in accordance with § 1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

(g) Notwithstanding any other provision of this section, CCC will not accept applications for loan deficiency payments that specify the payment rate beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). 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 in accordance with § 1427.25(e).

§ 1427.24 [Reserved]

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

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

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and

the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: (2 × Northern Europe current price) + Northern Europe forward price/3.

(ii) Weeks 3 and 4: Northern Europe current price + Northern Europe forward price/2.

(iii) Weeks 5 and 6: Northern Europe current price + (2 × Northern Europe forward price)/3.

(iv) Week 7 through July 31: Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the ''Northern Europe price.''

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

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section (adjusted world price), shall be applicable to the 1996 through 2002 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

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

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

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1$^{1}/_{16}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

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

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3), may be further adjusted if it is determined that:

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

(B) The Friday through Thursday average price quotation for the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: (2×U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /3.

(B) Weeks 3 and 4: (U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /2.

(C) Weeks 5 and 6: (U.S. Northern Europe current price)+(2×U.S. Northern Europe forward price) /3.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

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

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

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

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

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

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

(*3*) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii), and the Northern Europe price, as determined in paragraph (a).

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

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual

cost shall be substituted in lieu thereof for such week.

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

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

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

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

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

(ii) the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c), and the amount of the additional adjustment as determined in accordance with paragraph (f), shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. 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 workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c), shall be subject to further adjustments as provided in this section with respect to all qualities of upland cotton eligible for loan except the following grades of upland cotton 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 and Staple length must be determined in accordance with § 1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

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

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for ''coarse count'' cotton C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: (2 ''×'' Northern Europe coarse count current price) + Northern Europe coarse count forward price/3;

(*2*) Weeks 3 and 4: Northern Europe coarse count current price + Northern Europe coarse count forward price/2;

(*3*) Weeks 5 and 6: Northern Europe coarse count current price + (2 × Northern Europe coarse count forward price)/3; and

(*4*) Week 7 through July 31: The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the ''Northern Europe coarse count price.''

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (f)(2)(i):

(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 taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the 5-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) for the latest available week will continue to be applicable.

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

(h) The adjusted world price, determined in accordance with paragraph (c), shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the loan program for a crop of upland cotton.

§ 1427.26 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and OMB Control number 0560–0040, 0560, 0074, 0560–0027, and 0560–0054 was assigned.

26. Sec. 1427.100 is amended by revising the first sentence of paragraph (a), paragraph (b)(1) introductory text, and by adding a new paragraph (b)(3) to read as follows:

§ 1427.100 Applicability.

(a) The regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2003. These regulations set forth the terms and conditions under which the CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with Section 136(a) of the Federal Agriculture Improvement and Reform Act of 1996.

(b)(1) During the period beginning August 1, 1991, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in any week following a consecutive 4-week period in which—

* * * * *

(3) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed $701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the $701,000,000 limitation. Obligations incurred by CCC on or after April 5, 1996, will be charged against the $701,000,000.

27. Section 1427.101 is amended by revising paragraph (a) to read as follows:

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

* * * * *

28. Section 1427.103 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1427.103 Eligible upland cotton.

(a) * * *

(1) Opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or, excluding cotton covered under paragraph (a)(2), exported by an eligible exporter on or after July 18, 1996 and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets the requirements of paragraphs (b) and (c); or

(2) Sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991, and prior to July 18, 1996 during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which is contracted for delivery by the eligible exporter by not later than September 30, 1996, and which meets the requirements of paragraphs (b) and (c).

29. Sec. 1427.107 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2) introductory text, (d) introductory text, (e) introductory text, and by adding (f)(1)(iii) to read as follows:

§ 1427.107 Payment Rate.

(a) * * *

(1) For exporters for cotton shipped on or after July 18, 1996 (excluding cotton covered under paragraph (a)(2)) and for domestic users for bales opened during the period—

(i) * * *

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent.

(iii) * * *

(2) For exporters prior to July 18, 1996 for cotton which is contracted for delivery by not later than September 30, 1996,—

* * * * *

(d) Notwithstanding any other provision of this section, for contracts made by exporters prior to July 18, 1996, that specify shipment of the cotton by not later than September 30, 1996,—

* * * * *

(e) For U.S. cotton sold by the exporter under an optional origin contract for delivery by not later than September 30, 1996, prior to July 18, 1996, the payment rate * * *

(f) * * *

(1) * * *

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc price and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c)(1).

* * * * *

30. Section 1427.108 is amended by revising paragraphs (c)(2), and (d) and by adding paragraph (c)(3) to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) From August 1, 1991, through July 17, 1996, sold by the exporter on the date the contract for sale is confirmed in writing and which is contracted for delivery by not later than September 30, 1996; and

(3) Excluding cotton covered under paragraph (c)(2), through July 31, 2003, exported by the exporter on the date that CCC determines is the date on which the cotton is shipped.

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

31. Sec. 1427.109 is amended by revising paragraph (a)(3) to read as follows:

§ 1427.109 Contract cancellations.

(a) * * *

(3) All new export contracts entered into by the exporter on or after August 30, 1991, and prior to July 18, 1996 which are for delivery by not later than September 30, 1996.

* * * * *

32. Subpart D is revised to read as follows:

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

Sec.

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

§ 1427.160 Applicability.

(a) The regulations in this subpart are applicable to the 1996 through 2002 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by the Commodity Credit Corporation (''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 set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which are used in administering the recourse seed cotton loan program for a crop of cotton are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). Loan rates shall be based upon the location at which the loan collateral is stored.

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

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

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize State or 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 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 in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and part 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans 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 documents are signed by the guardian;

(3) Any note and security agreement 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) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved storage if the cotton is jointly owned by such producers. The cotton may have been produced by two or more eligible producers on one or more farms.

(e) A CMA may obtain loans on the eligible production of such cotton with respect to such cotton on behalf of the members of the CMA who are eligible to receive loans for a crop of cotton. For purposes of this subpart, the term ''producer'' includes a CMA.

§ 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 in accordance with part 718 of this title; and

(7) For upland cotton, be production from a farm with a production flexibility contract in accordance with part 1412 of this chapter.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

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

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b).

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure;

(2) Condition of the cotton;

(3) Location of the storage site or structure; and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges

thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days after the date of the producer received the AMS classification in accordance with § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment in accordance with 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 in accordance with subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved in accordance with subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a nonrecourse loan in accordance with subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan in accordance with subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to 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 in accordance with paragraph (e).

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is

involved in the violation. If CCC or the county committee determines the producer:

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

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

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

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

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

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages in accordance with paragraph (e); and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e);

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation in accordance with paragraph (e), 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 in accordance with paragraphs (f) or (g).

(i) Any or all of the liquidated damages assessed in accordance with the provision of paragraph (e) may be waived as determined by CCC.

PART 1430—DAIRY PRODUCTS

33. The authority citation for 7 CFR part 1430 is revised to read as follows:

Authority: 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

§§ 1430.450–1430.470 [Removed]

34. The subpart titled ''Dairy Termination Program'' (§§ 1430.450–1430.470) is removed.

35. The subpart heading which reads ''Price Support Program'', preceding § 1430 is designated as Subpart A and the heading is revised to read ''Subpart A—Price Support Program for Milk''.

36. Subpart A is revised to read as follows:

Subpart A—Price Support Program for Milk

Sec.

Subpart A—Price Support Program for Milk

§ 1430.1 Definitions.

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

AMS means the Agricultural Marketing Service, USDA.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Manufacturing allowance means:

(1) For milk used to produce butter and nonfat dry milk, the amount by which the product price value of butter and nonfat dry milk manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce those products; or

(2) For milk used to produce cheese, the amount by which the product price value of cheese manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce cheese.

Plant means the physical assets of an individual, partnership, association, corporation, cooperative, or other business enterprise used in the production of dairy products.

USDA means the United States Department of Agriculture.

§ 1430.2 Price support levels and purchase conditions.

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: $10.35 per hundredweight for calendar year 1996, $10.20 per hundredweight for calendar year 1997, $10.05 per hundredweight for calendar year 1998, and $9.90 per hundredweight for calendar year 1999.

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

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

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

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Farm Service Agency, Procurement and Donations Division, Stop 0552, 1400 Independence Ave. SW., Washington, DC 20250–0552, or the United States Department of Agriculture, Farm Service Agency, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

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

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

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

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

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

§ 1430.3 Ineligibility for purchase of products produced in States with excessive manufacturing allowances.

(a) For the period beginning May 1, 1996, and ending December 31, 1999, no product produced in a plant in a State under State milk pricing regulation will be eligible for sale to the CCC under § 1430.2 of this subpart, if the State, as determined by the Director, Dairy Division, AMS, provides in formulas establishing prices that handlers must

pay for milk, a manufacturing allowance that exceeds either:

(1) $1.65 per hundredweight of milk for milk manufactured into butter and nonfat dry milk; and

(2) $1.80 per hundredweight of milk for milk manufactured into cheese.

(b) Prior to a final determination that a State has in effect a manufacturing allowance that exceeds the manufacturing allowances provided in (a) of this section, the State shall be provided the opportunity to present information at a hearing before the Director, Dairy Division, AMS. The Director shall establish the procedures for such hearing.

(c) Reconsideration and review of the determinations made under (b) of this section may be sought by petition to the Deputy Administrator, Marketing Programs, AMS under procedures established by the Deputy Administrator.

Subpart B—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997

37. The subpart heading which reads ''Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997'', preceding § 1430.340 is designated as Subpart B.

38. Subpart B is amended by adding § 1430.362 to read as follows:

§ 1430.362 Assessment Termination, Refund Provisions for 1996 Assessments, and Clarification of Certain Procedures and Delegations.

(a) Notwithstanding any other provision of this part, no assessment shall be collected for milk marketed after April 30, 1996. Amounts collected for 1996 marketings shall be refundable as otherwise provided for in this subpart so long as, determined pursuant to this subpart, the producer's total milk marketings for calendar year 1996 were equal to or less than the producer's total marketings for calendar year 1995.

(b) For purposes of applying the provisions of this subpart:

(1)(i) No adjustment shall be made for milk marketings in a leap year, but rather comparisons between the refund and base period milk marketings shall be made on a calendar year basis.

(ii) If a producer quits marketing milk from a dairy operation during the refund period, the comparison of marketings with the preceding year shall be made by comparing the marketings of the months and days of production in the refund period with the corresponding months and days of the base period, subject, in addition, to the provisions in paragraph (a).

(2)(i) A producer under this subpart may be deemed to include the combination of all persons or entities with an interest in the production of milk on a farm or dairy operation.

(ii) The addition or removal of an individual or entity, who adds to or removes from existing dairy units any dairy cows, to or from those with an interest in a dairy operation, shall constitute the formation of a new producer and shall be deemed to end the production history on that farm or dairy operation of the previous producer.

(3) All delegations to persons or agencies contained in this subpart shall be deemed, as appropriate, to be made to the successor official or agency resulting from any reorganization made pursuant to Public Law 103–354.

39. Part 1430 is amended by adding Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products to read as follows:

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

Sec.

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

§ 1430.400 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart. The terms defined in parts 1405 and 1421 of this chapter shall also be applicable.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Processor means a person or legal entity that commercially processes milk into Cheddar cheese, butter, or nonfat dry milk.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture does not necessarily satisfy the loan indebtedness.

USDA means the United States Department of Agriculture.

§ 1430.401 Applicability.

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 1999. These regulations set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement which a processor must execute in order to receive such a loan.

(b) Loan rates for the eligible dairy products shall be made available in FSA State and county offices.

(c) Recourse loans shall be available as provided in this part for eligible Cheddar cheese, butter, and nonfat dry milk.

§ 1430.402 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), and shall 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 this subpart.

(c) The State committee shall take any action these regulations require which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), from determining any question arising under the program or from revising or modifying any State or county committee determination.

(e) The Deputy Administrator, 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 do not adversely affect recourse loan 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 which is not executed in accordance with such terms and conditions, including any purported

execution prior to the CCC authorized date, is null and void.

§ 1430.403 Loan rates.

(a) The Secretary will announce before January 1, 2000, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat.

(b) Such loan rates will be announced by USDA news release.

§ 1430.404 Quantity eligible for loan.

(a) Any processor is eligible for a recourse loan on eligible dairy products owned by such processor.

(b) The total quantity of eligible dairy product which a processor may pledge as collateral for a loan at any single time may not exceed:

(1) the quantity of eligible dairy products processed during the fiscal year in which application is being made; plus

(2) the quantity of eligible dairy products processed during and under loan on September 30 of the prior fiscal year, if such products are immediately repledged as collateral for a supplemental loan on October 1 of the current fiscal year.

(c) All eligible dairy products pledged as collateral for a loan are required to be stored identity-preserved in eligible storage facilities.

(d) The processor shall furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations.

§ 1430.405 Quality eligibility requirements.

(a) For dairy products to be eligible to be pledged as collateral for a recourse loan, the processor must furnish CCC such certification as CCC considers necessary to verify the following minimum quality requirements:

(1) Cheddar cheese shall be:

(i) U.S. Grade A or higher and moisture shall not exceed 38.5 percent for block cheese; or

(ii) U.S. Extra Grade and moisture shall not exceed 36.5 percent for barrel cheese.

(2) Nonfat dry milk shall be U.S. Extra Grade and moisture shall not exceed 3.5 percent; and

(3) Butter shall be U.S. Grade A or higher.

(b) Any eligible dairy product pledged as collateral must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) CCC shall, at any time, have the right to inspect collateral in the storage facilities in which it is stored.

§ 1430.406 Storage facility requirements.

Eligible dairy products will be stored under the terms and conditions CCC prescribes.

§ 1430.407 Availability, disbursement, and maturity of loans.

(a)(1) To obtain an initial recourse loan on eligible dairy products, a dairy processor:

(i) Must file a request for an initial recourse loan, as CCC prescribes, with the State committee of the State where such processor is headquartered or a State committee designated county committee;

(ii) Must execute a note and security agreement and a storage agreement as CCC prescribes; and

(iii) Shall be responsible for all costs incurred in moving eligible dairy products to an eligible storage facility.

(2) A request for an initial loan must be filed no later than September 30 of the fiscal year in which the product was produced, but no earlier than January 1, 2000.

(3) If there are any liens or encumbrances on eligible dairy products pledged as collateral for a recourse loan, waivers that fully protect CCC's interest 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 eligible dairy product after the loan is approved.

(4) A processor shall pay CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC.

(b) No loan proceeds may be disbursed for dairy products until they have actually been produced and are established as being eligible to be pledged as loan collateral.

(c) Loans will mature no later than September 30 following disbursement of the loan.

(1) Loan maturity dates may be accelerated by CCC in accordance with § 1430.428 (d) of this subpart.

(2) CCC may offer supplemental loans at the maturity of initial loans.

(d)(1) A processor may, if supplemental loans are offered, before the maturity date of an initial loan, request a supplemental loan by:

(i) Repaying the initial loan principal plus interest on September 30;

(ii) Repledging as collateral for a supplemental loan, on October 1, eligible dairy products identified as collateral for an initial loan maturing on September 30 of the immediately preceding fiscal year; and

(iii) Executing a note and security agreement and a storage agreement as CCC prescribes.

(2) Such supplemental loan:

(i) Shall be requested by the processor no later than September 30 of the fiscal year in which the initial loan is maturing.

(ii) Shall be at the loan rate and interest rate applicable to the month in which the supplemental loan is disbursed.

(iii) Shall mature as CCC specifies, but not later than September 30 following disbursement of the supplemental loan.

(iv) May only be authorized for 1 fiscal year.

(e) The county office shall file or record, as required by State law, all security agreements which are issued with respect to eligible dairy products pledged as collateral for loan. The cost of filing and recording shall be paid for by CCC.

§ 1430.408 Loan maintenance and liquidation.

(a) The processor shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Pay interest on the principal at a rate determined under part 1403 of this chapter;

(3) be responsible for storage costs through loan maturity;

(4) Be responsible for any loss in quantity or quality of the loan collateral, and

(5) be responsible for maintaining the quality and quantity of the loan collateral.

(b) The processor must pay CCC the principal and interest due and redeem their collateral no later than the loan maturity date.

(c) A processor may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal and interest applicable to the quantity of dairy product redeemed.

(d) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(e) Prior to loan maturity:

(1) The processor may request and obtain prior written approval of the loan making office to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before repayment of the loan by executing a Marketing Authorization for Loan Collateral (Form CCC–681–1).

(2) The loan making office will approve such a request when the buyer of eligible dairy products agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the dairy products the buyer purchased. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the dairy product, or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(f) If a processor's loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Late payment charges in addition to interest on the processor's indebtedness shall accrue at the rate specified in part 1403 of this chapter 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; and

(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 incurred by the CCC.

(g) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call all loans of the processor. Such determination shall result in the processor being deemed ineligible for loans for at least the remainder of the fiscal year.

(h) The security interests obtained by the CCC as a result of the execution of a security agreement by an eligible processor shall be superior to all statutory and common law liens on the collateral.

§ 1430.409 Miscellaneous provisions.

(a) CCC will not require the processor to insure the eligible dairy product pledged as collateral. However, if the processor insures such eligible dairy product and an indemnity is paid thereon, such indemnity shall accrue to the benefit of CCC to the extent of CCC's interest in the eligible dairy product involved in the loss.

(b) The regulations the Secretary issues governing offsets and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(c) A processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations of part 780 of this title.

(d) CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than 3 years from the loan disbursement date.

(e) Any false certification made for the purpose of enabling a processor to obtain or retain a recourse loan to which it is not entitled will subject the person making such certification to liability under applicable federal civil and criminal statutes.

§ 1430.410 Applicable forms.

The CCC forms used in connection with the dairy recourse loan program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term ''producer'' shall be deemed to mean ''processor'' and the term ''crop year'' shall be deemed to mean ''fiscal year''.

40. Part 1434 is revised to read as follows:

PART 1434—HONEY

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq.; 15 U.S.C. 714b and 714c.

§ 1434.1 Termination.

The price support and loan deficiency program for honey was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Honey Program for the 1995 and prior marketing years found at part 1434 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of loans outstanding on or after July 18, 1996.

41.–42. Part 1435 is revised to read as follows:

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Subpart B—Loan Program

Subpart C—Sugar Marketing Assessments

Subpart D—Information Reporting and Recordkeeping Requirements

Authority: 7 U.S.C. 7272; and 15 U.S.C. 714b and 714c

Subpart A—General Provisions

§ 1435.1 Applicability.

(a) The regulations of this part in effect on January 1, 1995, shall govern the price support loan program and producer protections for the 1995 crop year. These regulations have been removed from the CFR but may be found in the previous CFR volume containing revisions as of January 1, 1995.

(b) These regulations set forth the terms and conditions under which Commodity Credit Corporation (CCC) will make loans and enter agreements with eligible processors for the 1996–2002 crop years. Additional terms and conditions are set forth in the loan application and the note and security agreement which the processor must execute in order to receive a loan. These regulations stipulate the requirements for making sugar marketing assessment payments to CCC for fiscal years 1996 through 2003 and the information reporting requirements for the 1996–2002 crop years.

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. The terms defined in part 718 of this title are also applicable.

Beet sugar means sugar which is processed directly or indirectly from sugar beets or sugar beet molasses.

Cane sugar refiner means a person who processes raw cane sugar into refined crystalline sugar or liquid sugar.

CCC means the Commodity Credit Corporation, USDA.

Crop year means the period from July 1 through June 30, inclusive. In referring to the crop year for a particular crop, the crop year begins on July 1 of the year of that crop. For example, the crop year for the 1996 crop begins on July 1, 1996, and is referred to as the ''1996 crop

year.'' The 1996 crop means sugar processed from domestically-produced sugar beets or sugarcane during the 1996 crop year. Sugar from desugaring molasses is considered to be from the crop year during which the desugaring took place.

First processor means a person who commercially produces beet sugar or raw cane sugar, directly or indirectly, from domestically-produced sugar beets or sugarcane, or from molasses or thick juice derived from domestically-produced sugar beets or sugarcane.

Market means, relative to any first processor, the shipment in conjunction with a sale or other disposition, or the forfeiture to CCC, of beet sugar or raw cane sugar by the first processor of such sugar, and the movement of raw cane sugar into the refining process. Beet sugar or raw cane sugar is deemed to be marketed as of the date of shipment from the first processor's facility, the date on which raw cane sugar was moved into the refining process, or the date on which sugar was forfeited to CCC.

Nonrecourse loan means a loan for which the eligible sugar offered as loan collateral may be delivered or forfeited to CCC, at loan maturity, in satisfaction of the loan indebtedness.

Raw sugar means any sugar which is to be further refined or improved in quality.

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 in accordance with 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.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture of the sugar does not necessarily satisfy the loan indebtedness.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and cane syrup.

Sugar beet processor means a person who produces sugar by commercially processing sugar beets or sugar beet molasses.

Sugarcane processor means a person who produces raw cane sugar by commercially processing sugarcane or sugarcane molasses.

Tariff-rate quota means the total of the aggregate quantities of raw cane sugar and other sugars, syrups and molasses established, or subsequently modified, by the Secretary pursuant to the provisions of additional U.S. note 5(a) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) for imports to be entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS or successor subheadings.

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, or of any other person having custody of records that the examining agency deems necessary to verify compliance with the requirements of this part. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, and cane sugar refiner or any person having custody of the records shall 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 in accordance with subpart B;

(2) A marketing assessment is remitted to CCC in accordance with subpart C; and

(3) Market data are reported to CCC in accordance with subpart D.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) This subpart is applicable to the 1996 through 2002 crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which CCC will make recourse and nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which 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, or molasses.

§ 1435.101 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA) and shall 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 the regulations of part 1435.

(c) The State committee shall take any action part 1435 requires which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with part 1435; or

(2) Require a county committee to withhold taking any action which is not in accordance with part 1435.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, (Administrator, FSA) from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator, 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 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 which is not executed in accordance with such terms and conditions, including any purported execution prior to the CCC-authorized date, shall be null and void.

§ 1435.102 Loan types.

(a) CCC will make available to eligible processors of the 1996 through 2002 crops of domestically-produced sugar beets and sugarcane:

(1) Recourse loans if the tariff-rate quota is not above 1,500,000 short tons, raw value, at the time of loan approval

and has never been above 1,500,000 short tons, raw value, at any time during the fiscal year;

(2) Nonrecourse loans if the tariff rate quota exceeds 1,500,000 short tons, raw value, at the time of loan approval or has exceeded 1,500,000 short tons, raw value, at any time during the fiscal year.

(b) Outstanding recourse loans will be automatically converted to nonrecourse loans if the tariff-rate quota is increased to a level above 1,500,000 short tons, raw value. However, if the recourse loan recipient pays the principal amount of the loan, plus interest, within 30 days from the date the tariff-rate quota was increased, then the loan will be treated for all purposes whatsoever as if it had not been converted to a nonrecourse loan. Once nonrecourse loans are made available, they will not be converted to recourse loans any time during the fiscal year, even if the tariff-rate quota is subsequently reduced to a level equal to, or less than, 1,500,000 short tons, raw value.

§ 1435.103 Loan rates.

(a) The national average loan rate for raw cane sugar produced from the 1996 through 2002 crops of domestically-grown sugarcane is 18 cents per pound, raw value.

(b) The national average loan rate for refined beet sugar from 1996–2002-crop domestically-grown sugar beets is 22.90 cents per pound of refined beet sugar.

(c) The loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral and are available from State and county offices.

§ 1435.104 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-produced sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except 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 the regulations governing controlled substance violations at 7 CFR part 718.

(b) A sugar beet or sugarcane processor is eligible for loans if the processor agrees to all the terms and conditions in the loan application and the note and security 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 suitable storage;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States or Puerto Rico; and

(5) Must have processor certification in the loan application that the sugar is eligible and available to be pledged as collateral.

(d) 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 which would impair its merchantability or which 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;

(ii) Free from excessive color or moisture; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair its merchantability or which would impair or prevent its use for normal refining or commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which 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.

§ 1435.105 Availability, disbursement, and maturity of loans.

(a) To obtain a loan, a processor must:

(1) File a loan request, as CCC prescribes, no earlier than October 1 and no later than June 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 as CCC prescribes; and

(3) Pay CCC a loan service fee in connection with the disbursement of each loan. The Executive Vice President, CCC, will determine and announce the service fee amount.

(b) If there are any liens or encumbrances on sugar pledged as collateral for a loan, the processor must 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 the loan is approved.

(c) No loan proceeds may be disbursed until the sugar has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(d) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan.

(1) In making application for such 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 § 1435.104.

(e)(1) Disbursements shall be made without regard to the actual polarity 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.

(2) Adjustments for polarity are only made at the time of loan forfeiture.

(f)(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 in accordance with § 1435.107(g).

(g)(1) Notwithstanding any other provision of this subpart, relative to sugar processed from sugar beets or sugarcane that normally is harvested during July, August, and September, a processor:

(i) May obtain a loan on such sugar;

(ii) Must settle the loan by September 30 following disbursement; and

(iii) May request a supplemental recourse or nonrecourse loan, depending on which type of loan is in effect according to § 1435.102.

(2) Such supplemental loan:

(i) Shall be requested by the processor during the following October;

(ii) Shall be at the loan rate in effect at the time the supplemental loan is made; and

(iii) Shall mature in 9 months minus the number of whole months that the initial loan was in effect.

§ 1435.106 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement; and

(2) Pay interest on the principal at a rate determined in part 1405.

(b) The security interests obtained by CCC as a result of the execution of security agreements by the processors of sugarcane and sugar beets shall be superior to all statutory and common law liens on raw cane sugar and refined beet sugar in favor of 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) Nonrecourse loan recipients shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processor for processing not less than the minimum payment levels CCC specifies for the applicable crop year when nonrecourse loans are in effect, except that processors who repay a recourse loan within the 30-day period provided for in § 1435.102(b) are not required to pay the minimum payment levels.

(d) A processor shall maintain eligible 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.

(1) The borrower is responsible for storage costs through the loan maturity date.

(2) Sugar pledged as loan collateral need not be stored identity preserved.

(3) When the proceeds of the sale of the sugar pledged as loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loanmaking office by executing a Market Authorization for Loan Collateral (form CCC–681–1) to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer prior to repayment of the loan. Any such approval shall be subject to the terms and conditions set forth in the applicable form and the loanmaking 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 the sugar being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the sugar; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(4) If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a recourse or nonrecourse loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan and other outstanding loans. Such determination shall result in the processor being ineligible for recourse loans for the remainder of that crop year and through the next crop year.

§ 1435.107 Loan settlement and foreclosure.

(a) A processor may, at any time prior to loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Recourse loan recipients must pay CCC the principal and interest on the loan and redeem their sugar collateral no later than the loan maturity date.

(c) Forfeiture will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quantity of sugar delivered, subject to adjustment for polarity, if the processor:

(1) Notifies in writing the appropriate loanmaking office of the processor's intent to forfeit the loan collateral, states the amount of loan collateral intended to be forfeited, and delivers the notice to the loanmaking office no later than 30 days prior to the maturity date of the loan;

(2) Executes a storage agreement, as CCC prescribes, prior to forfeiture or delivers the loan collateral to a CCC-approved storage facility upon forfeiture; and

(3) Pays the following forfeiture penalty on sugar pledged as collateral at the time of forfeiture:

(i) The penalty for raw cane sugar is 1 cent per pound; and

(ii) The penalty for beet sugar is 1.072 cents per pound; and

(4) Reduces payments owed producers by the producer's share of the aggregate loan forfeiture penalty incurred by the processor. The producer's share of the aggregate loan forfeiture penalty is calculated as the producer's share of the net selling price of the processor's sugar, provided for explicitly or implicitly in the contract between producers and processor, times the aggregate loan forfeiture penalty.

(d) Even though a processor gave notice of intent to forfeit, the processor may, at any time prior to maturity of the nonrecourse loan, redeem the loan collateral in accordance with this section.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of:

(1) the amount specified in the notice of intent to forfeit; or

(2) the quantity of sugar which is shown on the note and security agreement minus any quantity that was redeemed or released for removal in accordance with this section.

(f) If the processor does not redeem any amount of the nonrecourse loan collateral and the conditions of paragraph (c) of this section have been fulfilled, the unredeemed nonrecourse loan collateral will, without further CCC or processor action, be deemed to have been forfeited and delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Title, all rights, and interest to the sugar immediately vests in CCC upon delivery.

(g)(1) CCC may at any time accelerate the date for loan repayment indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(2) In the event of any such acceleration of nonrecourse loans, the required notice of intent to forfeit, as set forth in paragraph (d)(1), may be given at any time prior to the accelerated maturity date.

(h) If a processor's recourse or nonrecourse loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 in this chapter 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; and

(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 incurred by the CCC.

§ 1435.108 Storage facility requirements.

(a) Sugar forfeited to CCC must be delivered in or to a CCC-approved storage facility.

(1) Eligible storage is any storage facility which:

(i) Meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (part 1423 of this chapter); and

(ii) Is placed under a storage contract with CCC.

(2) If the sugar is delivered in or to an ineligible storage facility, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(b) CCC has the right to inspect loan collateral or CCC-owned sugar and the storage facilities in which the sugar is situated at any time.

(c) Regardless of whether CCC inspected the sugar and storage facility prior to delivery, the processor is liable to CCC for any damages CCC suffers if:

(1) The processor delivers ineligible sugar to CCC; or

(2) The processor delivers sugar into ineligible storage.

§ 1435.109 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any forfeited loan collateral on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of these regulations and the terms of the storage agreement conflict, the terms set forth in the regulations are applicable.

(b) The storing processor is responsible for maintaining the quality and condition of CCC-owned sugar. The processor is liable to CCC for any damages CCC suffers due to the failure of the processor to load out sugar meeting the criteria set forth in § 1435.104(d). Also, the processor shall store the sugar in the eligible storage where delivered for as long as CCC deems necessary.

(c) If a processor forfeits loan collateral and CCC and the processor fails to enter into a storage contract, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(d) A processor storing CCC-owned sugar is responsible for all load-out expenses in the event that CCC sells the sugar.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar. The storage payment rate shall be as CCC and the processor agree, and according to the terms and conditions CCC sets forth when executing a note and security agreement.

§ 1435.110 Miscellaneous provisions.

(a) The regulations issued by the Secretary governing setoffs and withholding set forth at part 3 of this title and part 1403 of this chapter 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 in accordance with the regulations at 7 CFR part 780.

(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.

§ 1435.111 Applicable forms.

CCC forms used for this program are available from the appropriate State committee or designated county committee. For purposes of any CCC form that refers to program participation by producers, the term ''producer'' shall be taken to mean ''processor.''

Subpart C—Sugar Marketing Assessments

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to CCC of marketing assessments for beet sugar and raw cane sugar marketed during fiscal years 1996 through 2003.

(b) The marketing assessment applies to:

(1) First processor marketings of all raw cane sugar processed during fiscal years 1996 through 2003 from domestically-produced sugarcane or sugarcane molasses, and

(2) First processor marketings of all beet sugar processed during fiscal years 1996 through 2003 from domestically-produced sugar beets or sugar beet molasses.

§ 1435.201 Marketing assessment rates.

(a) For marketings during fiscal year 1996, the assessment rate per pound of beet sugar is 0.2123 cents per pound. The assessment rate for fiscal years 1997 through 2003 is 0.2654 cents per pound.

(b) For marketings during fiscal year 1996, the assessment rate per pound of raw cane sugar is 0.1980 cents per pound, raw value. The assessment rate for fiscal years 1997 through 2003 is 0.2475 cents per pound, raw value.

§ 1435.202 Remittance.

(a) The monthly amount of the beet sugar marketing assessment to be remitted to CCC is determined by multiplying the number of pounds of beet sugar marketed in the calendar month by the assessment rate.

(b) The monthly amount of the marketing assessment on raw cane sugar to be remitted to CCC is determined by multiplying the number of pounds, raw value, of raw cane sugar marketed, or estimated to be marketed in accordance with (e)(1) of this section, in the calendar month by the assessment rate.

(c)(1) First processors shall remit marketing assessments to CCC no later than the 30th calendar day following the end of the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(2) Mailed remittances will be considered timely if they are postmarked not later than the 25th calendar day following the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(3) CCC must receive electronic remittances by the 30th calendar day following the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(4) Any processor who fails to file a remittance by the due date shall be assessed a civil penalty and interest in accordance with § 1435.203.

(d)(1) First processors shall prepare and submit a fully and accurately completed form CCC–80 each month that shows:

(i) Beet sugar marketings during the previous calendar month; and

(ii) Raw cane sugar, raw value, marketings during the previous calendar month.

(2) First processors who do not operate on a calendar month basis may pay their assessments based on marketings on several extra days or fewer days than the calendar month reporting period, consistent with the processor's standard accounting period. However:

(i) Assessments must be paid on all marketings of specific crop year sugar in the fiscal year it is due; and

(ii) The marketing assessments must be remitted monthly and by the dates specified in this section.

(3) The entire assessment that is due and payable shall be remitted with the Form CCC–80.

(e)(1) If, when a raw cane sugar assessment is due and payable, the first processor cannot determine the exact raw value of such sugar, an estimate of raw value based on the recent experience of the processor shall be made and the assessment submitted on the estimated quantity.

(2) Whenever an assessment is based on an estimate of raw value pursuant to (e)(1), any necessary adjustments to the quantity of raw sugar subject to the assessment shall be made by filing a corrected Form CCC–80 no later than 30 calendar days after the last day of the month in which the estimated assessment was paid. If, according to the corrected Form CCC–80:

(i) The assessment was underpaid, the first processor shall remit the additional assessment due with the corrected Form CCC–80, and

(ii) If the assessment was overpaid, the first processor shall subtract the overpayment from any assessment due at the time the corrected Form CCC–80 is filed, or if none is due at that time, from the assessment next due.

(f) By October 30 of each year, first processors shall determine the quantity of beet sugar or raw cane sugar on hand that was produced during the preceding

fiscal year but not marketed by September 30 of such preceding fiscal year and shall remit a marketing assessment to CCC as if the sugar had been marketed in September of such preceding fiscal year. Such sugar is not subject to a second assessment when it is marketed.

(g) First processors shall send remittances and CCC–80 forms as CCC specifies.

§ 1435.203 Civil penalties and interest.

(a) A first processor is liable for a civil penalty of up to 100 percent of the relevant national average loan rate times the marketings of beet sugar or raw cane sugar involved in the violation if the processor:

(1) Fails to remit, on a timely basis, the entire amount of any marketing assessment in accordance with this subpart;

(2) Fails to submit Form CCC–80 fully and accurately completed; or

(3) Fails to maintain and permit inspection of records as required by § 1435.204.

(b) In addition to any civil penalty assessed in accordance with this section, interest on unpaid assessments or deficiencies in assessments paid is due and payable at the rate specified in part 1403 of this chapter beginning on the 1st day of the month after the marketing assessment was due in accordance with § 1435.203. Interest shall continue to accrue until such amount is paid. However, if full payment of an assessment is received within 30 calendar days of the date on which the assessment was due, no interest shall apply.

(c) The Controller, CCC, shall assess civil penalties and interest.

(d) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(e) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

§ 1435.204 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of evidence acceptable to the Controller, CCC, adjustments to an assessment may be made by CCC to reflect the actual marketings of beet sugar or raw cane sugar, or a first processor may adjust the amount of the assessment due in accordance with § 1435.202.

Subpart D—Information Reporting and Recordkeeping Requirements

§ 1435.300 General statement.

(a) Every sugar beet processor, sugarcane processor, and cane sugar refiner shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.301 Civil penalties.

(a) Any processor or refiner who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.300, is subject to a civil penalty of no more than $10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(d) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

PART 1446—PEANUTS

43. The authority citation for part 1446 is revised to read as follows:

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

44. Section 1446.101 is amended by revising the first and second sentences of the section to read as follows:

§ 1446.101 General statement.

This part sets out provisions relating to the 1996 through 2002 crops of peanuts as authorized and in accordance with the applicable provisions of Public Law 104–127. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified in this part 1446 as of January 1, 1996. * * *

45. In § 1446.103, the definition of ''eligible producer'' is amended by redesignating paragraph (4) as paragraph (5) and adding a new paragraph (4) in its place, and paragraph (1) of the definition of ''support rate'' is revised to read as follows:

§ 1446.103 Definitions

* * * * *

Eligible producer. An eligible producer for purposes of price support under this part shall be a person who meets all of the following criteria:

* * * * *

(4) The person has not marketed 100 percent of a quota peanut crop that meets the quality requirements for domestic edible use, through a marketing association for the 2 marketing years immediately preceding the current marketing year, if handlers have provided the producer with written offers, upon delivery, for the purchase of all the quota peanuts, at a price equal to or in excess of the quota support price. If a producer is rendered ineligible for quota price support under this or any other provision, the producer may appeal the ineligibility determination utilizing procedures provided in part 780 of this title.

* * * * *

Support rate.—(1) *National average.* The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, shall be $610.00 per ton. The national average price support rate for additional peanuts, for each of the 1996 through 2002 crops, shall be the rate announced by the Secretary.

* * * * *

46. In § 1446.203, paragraph (b) is revised to read as follows:

§ 1446.203 Marketing card entries and collection of assessments, penalties and debts.

* * * * *

(b) *Farmers Home Administration or Farm Service Agency lien.* If a Farmers Home Administration or Farm Service Agency lien has been recorded on the marketing card that was issued for the use of a producer when marketing peanuts, the purchaser of such peanuts shall make the check, for the proceeds

from such peanuts, payable jointly to the producer and the Farm Service Agency. However, if a peanut poundage quota lien was also recorded on the marketing card against such producer, the check shall be made payable jointly to the producer, CCC and the Farm Service Agency.

47. Section 1446.307 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

* * * * *

(b) *Limitation of amount eligible for transfer.* A transfer made in accordance with this section shall not exceed the smaller of:

(1) The difference between:

(i) The total quantity of Segregation 1 peanuts marketed from the farm, plus the amount of peanuts retained on the farm for seed or other use, and

(ii) The effective farm poundage quota, excluding quota pounds transferred to the farm in the fall; or

(2) Twenty-five percent of the effective farm poundage quota, excluding quota pounds transferred to the farm in the fall.

* * * * *

(d) *Loan value for transferred peanuts.*—(1) *Segregation 2 peanuts.* The quota loan value for any lot of Segregation 2 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 2 peanuts transferred in accordance with this section.

(2) *Segregation 3 peanuts.* The quota loan value for any lot of Segregation 3 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 3 peanuts transferred in accordance with this section.

* * * * *

48. Section 1446.308 is amended by revising paragraphs (a), (d) and (e)(1), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) to read as follows:

§ 1446.308 Loan pools.

(a) *Establishment of pools.*—(1) Each marketing association shall establish six separate loan pools; one for each of the three segregations of additional peanuts and one for each of the three segregations for quota peanuts. These pools shall be formed without regard to the type of peanuts (Runner, Virginia, Spanish, or Valencia) involved. However, the SWPGA shall also establish 12 separate loan pools for Valencia peanuts produced in New Mexico, namely, for bright hull peanuts and for dark hull peanuts separately, to include for each of them separate, by segregation, additional peanuts and quota peanuts pools. Each marketing association shall maintain separate, complete and accurate records for each loan pool that is established by the marketing association.

(2) *Eligibility to participate in New Mexico Pools.*

(i) *In general.* Except as provided in clause (a)(2)(ii) of this section, in the case of the 1996 and subsequent crops, Valencia peanuts not physically produced in the State of New Mexico shall not be eligible to participate in the pools of the State even if the farm on which the peanuts are produced is constituted for administrative purposes within the State of New Mexico.

(ii) *Exception.* A producer of Valencia peanuts may enter Valencia peanuts that are physically produced in Texas into the pools for New Mexico in a quantity not greater than the average annual quantity of the peanuts that the producer entered into the New Mexico pools for the 1990 through 1995 crops; however, to qualify, the peanuts must be produced on the same farm on which the peanuts were produced during the base years of 1990 through 1995.

* * * * *

(d) *Recovery of losses in quota area loan pools.*—(1) If the loan indebtedness on the peanuts in a quota area pool exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered using the following sources in the following order of priority:

(i) Proceeds due any individual producer from any pool, as a result of the transfer of peanuts for pricing purposes from an additional loan pool to a quota loan pool, pursuant to the provisions in § 1446.307.

(ii) Gains of any producer in the same pool, by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

(iii) Gains or profits resulting from the sale of additional peanuts, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, in the same marketing area for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(iv) Marketing assessments, collected from producers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(v) Gains or profits from quota pools in other marketing areas, other than separate type pools established under paragraph (a) of this section for Valencia peanuts produced in New Mexico.

(vi) Gains or profits resulting from the sale of additional peanuts in other marketing areas, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(vii) Marketing assessments, collected from handlers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(viii) Increased marketing assessments on quota peanuts in the production area covered by the pool, which shall be assessed as needed and collected from producers under § 729.317 of this title.

(2) The exceptions provided for Valencia peanuts in paragraph (d)(1) of this section shall only apply as to prevent offsets between pools for each of the Valencia types (bright-hull and dark-hull) for New Mexico and other peanuts.

* * * * *

(e) *Pool distribution.*—(1) Net gains as determined in accordance with this section on peanuts in each area pool shall be distributed to each producer who placed peanuts in that pool in proportion to the dollar value of peanuts placed in such pool by that producer, except that the proceeds available for the amount of distribution shall be subject to any other conditions and offsets set forth in this section; and

* * * * *

49. Section 1446.401 is amended by revising paragraph (a)(1) to read as follows:

§ 1446.401 Contracts for additional peanuts for crushing or export.

* * * * *

(a) *Contract form and addendum.*—(1) *Contract form.* In order to be approved by the county committee, the contract must be completed on Form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President, CCC, or designee, which follows the organization of the CCC–1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

* * * * *

50. Section 1446.410 is amended by revising paragraph (b) to read as follows:

§ 1446.410 Disposition date.

* * * * *

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association to November 30 of the year following the calendar year in which the crop was grown if, by the final disposition date identified in paragraph (a) of this section, the handler files a written request with the marketing association that specifies the number of pounds for which an extension is requested.

51. Part 1468 is revised as follows:

PART 1468—WOOL AND MOHAIR

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

§ 1468.1 Termination.

The price support program for wool and mohair was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Wool and Mohair Program for the 1995 and prior marketing years found at part 1468 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of payments outstanding on or after July 18, 1996.

Dated: July 3, 1996.

Dan Glickman,

Secretary of Agriculture.

Dated: July 3, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

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