

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1421**

RIN 0560-AG72

2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds**AGENCIES:** Commodity Credit Corporation, USDA.**ACTION:** Final Rule.

SUMMARY: This final rule implements a portion of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the farm commodity price support programs of the Farm Service Agency (FSA) and Commodity Credit Corporation (CCC). The 2002 Act authorizes Marketing Assistance Loans and Loan Deficiency Payments (LDP) for peanuts, wool, mohair, pulse crops (lentils, small chickpeas, dry peas), wheat, feed grains, soybeans and other oilseeds. Peanuts, wool, mohair and pulse crops, have not been eligible for these programs prior to enactment of this law and this rule adds these new commodities. Other provisions of the 2002 Act will be implemented under separate rules. The intended effect of this rule is to implement legislative requirements, add new crops to those eligible for assistance and increase the number of farm operators who may receive FSA and CCC program benefits.

EFFECTIVE DATE: October 8, 2002.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Notice and Comment**

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

These regulations are thus issued as final.

Executive Order 12866

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

Federal Assistance Programs

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

Regulatory Flexibility Act

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

Environmental Review

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

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This

rule is not retroactive. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Paperwork Reduction Act

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

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, however, loan application forms are available electronically through the USDA eForms website for downloading. The regulation is available at FSA's Price Support Division internet site. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Background

The 2002 Act provides for Marketing Assistance Loans and Loan Deficiency Payments (LDP's) for the 2002 through 2007 crop years. Marketing Assistance Loans and Loan Deficiency Payments are intended to: (1) Minimize potential loan forfeitures; (2) subsequent government accumulation of stocks; (3) minimize the cost incurred by the Federal Government in storing the commodity and; (4) allow a commodity produced in the United States to be marketed freely and competitively both domestically and internationally.

Producers of commodities that are eligible for loans can request marketing assistance loans or LDP's on their harvested commodities. Eligible producers request loans and LDP's on or before the final loan availability date for the applicable commodity. Marketing assistance loans are 9-month loans. Producers may repay the loan at a rate that is less than the original loan rate plus interest when market prices are below the commodity loan rates, which are established by law. Marketing assistance loans accomplish two objectives. First they provide producers with interim financing by providing money for continued farming operations while not requiring the crop to be marketed during a period which commonly coincides with a producer's peak labor demands. Second, they facilitate the orderly marketing and distribution of loan eligible commodities throughout the year, since it gives the producer another option

beyond sale of the crop whenever funds may be needed.

As an alternative to a marketing assistance loan, a producer may obtain an LDP on their crop. An LDP is available to a producer who, although eligible to obtain a marketing assistance loan, agrees to forgo a marketing assistance loan for the commodity in return for an LDP. The payment is the established loan rate for the applicable loan commodity less the repayment rate multiplied by the eligible quantity of the commodity. The specific material changes made to the marketing assistance loan and LDP programs by the 2002 Act being implemented in this rule are as follows:

Loan Commodities Eligible

The previous law that authorized FSA and CCC to make marketing assistance loans was the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The 1996 Act limited marketing assistance loans to wheat, feed grains, oilseeds, cotton and rice. The specific oilseeds were eligible for marketing assistance loans, including sunflower, flaxseed, canola, rapeseed, safflower seed, mustard seed, crambe, and sesame seed.

The 2002 Act also authorizes marketing assistance loans for wheat, feed grains, oilseeds, cotton and rice. However, using the 2002 Act authority, USDA announced that loan eligible oilseeds for the 2002 crop year will be sunflower, flaxseed, canola, rapeseed, safflower seed and mustard seed. Thus, crambe and sesame seed are NOT eligible loan commodities for the marketing assistance loan and LDP programs.

More significantly, the 2002 Act extended eligibility for marketing assistance loans and LDP's to peanuts, wool, mohair, honey, small chickpeas, lentils, and dry peas. The 2002 Act refers to these new loan commodities as "first time" loan commodities in section 1205(f)(1). The revisions necessary to incorporate these new commodities into the programs covered by 7 CFR part 1421 are made throughout this rule, and several major crop specific revisions are discussed below. Conforming changes are being made to other CCC regulations in distinct final rules as a result of these expanded commodity provisions of the 2002 Act.

Other Eligibility Requirements for Producers

The 2002 Act also added conditions for a producer to receive a marketing assistance loan or LDP. The major requirement added is that producers must report all cropland on the

applicable farm in which the eligible loan commodity is produced. Another restriction is that the producer must be in compliance with all wetland conservation requirements and other applicable conservation programs.

Another change that affects both the crop and producer who may be eligible is that program eligibility is no longer linked to "contract" commodities. The term "contract" commodities refers to provisions in the 1996 Act authorizing marketing assistance loans to eligible producers who produced commodities on a farm covered by a Production Flexibility Contract (PFC). The 2002 Act terminated the PFC program and authorizes marketing assistance loans to eligible producers of any eligible loan commodity produced on a farm for the 2002 through 2007 crop years covered. Thus, farms are not required to be covered by a PFC to be eligible. This relaxed requirement also applies to 2001-crop marketing assistance loans. Thus, commodities produced in 2001 on a farm not covered by a PFC are eligible for LDP's.

Beneficial Interest

As used in this rule beneficial interest in a commodity, means that all of the following remain with the producer: (1) Control of the commodity; (2) risk of loss; (3) title to the commodity. Beneficial interest requirements remain unchanged for most loan commodities, and, typically, all producers must retain beneficial interest in the commodity offered as collateral for a marketing assistance loan or LDP. However, the 2002 Act provides special treatment for 2001-crop and the "first time" loan commodities. Producers who lost "beneficial interest" in an eligible 2001 commodity before applying for a loan or LDP on that crop, may be eligible. Furthermore, producers of 2002-crop wool, mohair, honey, dry peas, lentils, and small chickpeas who lost beneficial interest in the 2002 crop prior to publication of the regulations are also eligible for LDP's. Likewise, producers of 2002 crop peanuts who before applying for a loan or LDP lost beneficial interest in a 2002 crop of peanuts are eligible for LDP's. Producers must request the LDP on or before the applicable final loan availability date which is January 31, 2003, for peanuts. For those LDP requests submitted after beneficial interest has been lost, the LDP rate will be based on the date it was lost. The exemptions provided in the 2002 Act are limited to those specified here. Beneficial interest must be maintained in order to receive a loan or an LDP in 2003 and subsequent crop years.

Hay, Silage and Unshorn Pelts

The 1996 Act authorized marketing assistance loans or LDP's for hay or silage. However, the 2002 Act, limits hay or silage and unshorn pelts derived from lambs to being eligible for an LDP only.

Warehouse Licensing Requirements

Eligible loan commodities offered as collateral for marketing assistance loans must be stored in an on-farm storage structure or warehouse approved by CCC. As the programs were administered under the 1996 Act, unlicensed storage facilities were not approved for storing collateral for a marketing assistance loan. The 2002 Act authorizes loan commodities serving as marketing assistance loan collateral to be stored in unlicensed warehouses if the producer redeems the marketing assistance loan immediately with a commodity certificate.

Treatment of First Time Loan Commodities

The 2002 Act directed USDA to make "first time" loan commodities available for marketing assistance loans and LDP's. Thus, for the first time, wool, mohair, honey, peanuts, lentils, small chickpeas and dry peas are eligible for the marketing assistance loan and LDP programs. As with all of the currently eligible loan commodities these loans are nonrecourse. Thus, producers may deliver the commodity pledged or repay the loan at the alternative repayment rate, a rate less than principal plus accrued interest. If such loans were, on the other hand, recourse loans, they would have to be repaid with principal plus interest, and the collateral could not be delivered or forfeited.

Wool and Mohair

The National Wool Act (Wool) Act has served as the basis for the FSA and CCC wool and mohair price support programs from 1955 to 1995. Public Law 103-130 enacted in November, 1993, was passed by Congress especially to phase out the USDA Wool Act programs over the 1994 and 1995 marketing years. However, subsequent legislation provided that the Secretary make recourse loans for mohair produced in 1999 and 2000. Under the recourse loans, producers had to repay marketing assistance loans at principal plus interest and commodities pledged as collateral for recourse loans could not be delivered or forfeited to settle a outstanding loan. The 2002 Act provides for wool and mohair nonrecourse loans. Thus, now, producers who offer wool or mohair as collateral to secure a nonrecourse loan

may repay their loan at the alternative repayment rate or forfeit the wool or mohair to satisfy the loan, just like other eligible commodities.

Peanuts

The 2002 Act made profound changes to the FSA and CCC peanut program. Under title III of the Agricultural Adjustment Act of 1938, USDA administered a two-tiered price support program for peanuts. Eligible producers were limited to an established quota for domestic marketing. The old program limited the producers ability to market peanuts domestically and the old peanut price support program designated and authorized three area Marketing Associations to manage the commercial marketing of peanuts grown in the U.S. This program was terminated by the 2002 Act, which now extends the marketing assistance loan and LDP program coverage to peanuts for the 2002 through 2007 crops. The 2002 Act provides producers with the responsibility for and flexibility of marketing their own peanuts. Producers will be more involved in the orderly marketing of their peanuts. The 2002 Act revokes the authority of the Marketing Associations to manage and sell peanuts on behalf of the Commodity Credit Corporation. Producers may request marketing assistance loans from FSA. USDA will pay storage, and associated costs, according to this rule, for marketing assistance loan peanuts.

National Loan and Repayment Rates

Congress announced the national loan rates for the 2002 through 2007 crop years for the eligible loan commodities. The loan rates specified by 2002 Act are as follows:

	2002-03 crop year	2004-07 crop year
Wheat	\$2.80/bu.	\$2.75/bu.
Corn	1.98/bu.	1.95/bu.
Grain sorghum	1.98/bu.	1.95/bu.
Barley	1.88/bu.	1.85/bu.
Oats	1.35/bu.	1.33/bu.
Rice	6.50/cwt.	6.50/cwt.
Soybeans	5.00/bu.	5.00/bu.
Other oilseeds	0.096/lb	0.093/lb
Peanuts	355/ton	355/ton
Graded wool	1.00/lb	1.00/lb
Nongraded wool	0.40/lb	0.40/lb
Mohair	4.20/lb	4.20/lb
Small chickpeas	7.56/cwt.	7.43/cwt.
Lentils	11.94/cwt.	11.72/cwt.
Dry peas	6.33/cwt.	6.22/cwt.

The 2002 through 2007 crop year loan rates were increased for wheat, corn, grain sorghum, and oilseed from those provided in the 1996 Act.

In addition, the Secretary may differentiate other oilseed loan rates to

reflect market price relationships among the different other oilseed types—an authority not provided in the 1996 Act. To the extent practicable, USDA will make adjustments to ensure "weight averaged" base county loan rates are consistent and reflect current market conditions. Also, the basis for adjustments to base county loan rates, will be used when determining alternative repayment rates for the applicable loan commodity, considering location and quality of the loan commodities. Beyond adjustments for market conditions, the Secretary may adjust repayment rate as necessary to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits between States and counties.

Payments In Lieu Of Loan Deficiency Payments For Grazed Acreage

The 2002 Act also provides a new payment program for producers who graze livestock on land that may otherwise be used to produce LDP eligible crops, also known as "graze-out" provisions. Producers who would be eligible for a wheat, barley, oats, or triticale LDP but instead use those planted crops to graze livestock will be eligible for LDP's if they agree to forgo harvesting of that acreage. The yield for the purposes of calculating the payment on graze-out wheat, barley and oats are those established for direct payments under the Direct and Counter-Cyclical Payment Program (DCP) authorized by the 2002 Act (7 U.S.C. 7913). The payment yield for triticale is the farm's wheat payment yield for direct payments under the DCP. For farms where a program payment yield is unavailable, USDA will establish an appropriate payment yield considering the yields applicable to the commodity for at least three similar farms. The payment amount per commodity is the payment rate multiplied by the payment yield, multiplied by the number of acres grazed. Triticale will be based on the predominant class of wheat in the county. Graze-out acreage planted to this wheat, barley, oat, or triticale will not be eligible for an indemnity payment under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) or a payment under the noninsured crop disaster assistance program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7201 *note*).

Cost/Benefit Assessment Summary

The changes made by the 2002 Act will have a significant impact on CCC and FSA funding and expenditures. The 2002 Act expands eligibility considerably for marketing assistance loans, loan deficiency payments and the price support programs governed by the regulations amended by this rule. Also, while the loan rate for soybeans is decreased, the rate for wheat, barley, and corn is increased, and other eligible crops are added, such as pulse crops, and peanuts. The net fiscal impact of the changes made by the 2002 Act and promulgated by this rule compared with continuing 1996 Act provisions will be to increase governmental outlays as shown in the Table 1.

TABLE 1.—AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007
[In million of dollars]

Program	Average ¹
Loan Rates for Covered Commodities ²	859
Loan Deficiency-like Payments for Grazed—Wheat, Barley, Oats	12
Triticale	26
Pulse Crops ³	18
Wool and Mohair	2
Honey	80
Peanuts	997
Total	1,994

¹ Average annual outlay change.

² Includes wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.

³ Dry peas, lentils, and small chickpeas.

Covered Commodities, Except Other Oilseeds

Outlays for marketing assistance loan and loan deficiency payments are projected to average about \$4.1 billion during FY's 2002–2007. The outlays progressively decline during the period. Market prices for each commodity are estimated to increase in this period, eroding LDP rates and marketing loan benefits. For some crops, outlays disappear completely by 2007. Outlays for marketing assistance loans and LDP's are projected to be about \$859 million higher per year than they were under the 1996 Act. The increase is mainly due to higher loan rates (except for rice). Soybean projected loan outlays decrease because soybean acreage is projected to shift to other crops, demand remain constant, soybean supplies decrease and prices increase, according to capitalist market forces. For rice, the loan rate is unchanged and projected loan outlays decline slightly.

Other Oilseeds**Setting Differentiated National Loan Rates**

Market prices vary substantially among the various types of other oilseeds (oil-type sunseed, other-type (confection) sunseed, flaxseed, canola, rapeseed, safflower, and mustard seed). The 1996 Act required that loan rates be set "individually" for the other oilseed types based on the all-sunflower seed price. The 2002 Act gives the Secretary the latitude necessary to differentiate other oilseed loan rates to reflect market price relationships among the different other oilseed types.

Setting loan rates to reflect market price relationships among the other oilseed types reduces past market distortions that have resulted from using a single loan rate for all the other (minor) oilseeds types. Loan rate-driven distortions occur during low-price periods when large LDP's for the lower-valued oilseeds (oil-type sunflower seed, canola, and flaxseed) have the undesirable effect of creating incentives to shift acreage away from the higher-valued oilseeds (confection sunflower seed and safflower).

Establishing differentiated other oilseed loan rates eliminates the incentive to shift acreage from higher-valued to lower-valued oilseeds. This is particularly important for sunseed where low prices and high oil-type sunseed LDP'S during recent years resulted in USDA setting 2000 and 2001 loan and loan repayment rates equal for oil-type and confection sunseed. (Confection repayment rates were not allowed to drop more than \$3.00 per cwt. below loan rates, thus limiting confection LDP'S to \$3.00 per cwt.). This change was necessary to maintain confection sunseed acreage as oil-type sunseed LDP'S raised relative per-acre returns to levels that discouraged confection planting.

The announced 2002 loan rates for oil-type and confection sunseed reflect a \$2.95-per-cwt. spread at the national level. This spread is consistent with the spread that existed during the early 1990's before the loan program began to distort sunseed plantings and prices. It also establishes a guaranteed price spread that the sunseed industry indicates is critical to maintaining a balance of production between the sunseed types.

Differentiating other oilseed loan rates based on market price relationships is projected to cost less than setting all other oilseed loan rates at the same level over the 7-year life of the 2002 Act. Other oilseed loan program outlays are projected to average \$24 million per

year for crop years 2002–2007. Loan program outlays under the alternative of setting loan rates at the same level are projected to average \$48 million per year.

The use of market-based loan rates is expected to reduce canola, flaxseed, and oil-type sunseed acreage and increase confection sunseed, mustardseed, and safflower acreage. This will bring acreage, production, and prices among the other oilseeds more in line with market demand. Planted acreage is expected to average about 250,000 acres lower for crop years 2003–2007 than it would be under a single loan rate. This represents a relatively small 5-percent annual reduction in total other oilseed acreage. Historically, other oilseed acreage has varied widely. Since 1995, plantings have ranged from 3.2 million acres in 1996 to 5.4 million acres in 1999.

Designating Other Oilseeds Eligible for Loans and LDP

Crambe is not designated as an "other oilseed" under the 2002 Act, although it was loan-eligible under the 1996 Act for crop years 1999, 2000 and 2001. This change is expected to eliminate \$367,000 in loan program outlays during the 2002–2007 crop years. Some of these savings will be offset as producers shift production into other covered commodities. Without the substantial level of price support provided to crambe during recent years, acreage is expected to continue to decline. Crambe plantings have declined from 42,000 acres in 1998 to an estimated 14,000 acres for 2002. Lack of designation as an other oilseed will eliminate the potential of an additional \$1.3 million in projected direct payments to crambe producers during the life of the 2002 Act.

Sesame also is not designated as an other oilseed under the 2002 Act. It was designated as loan-eligible under the 1996 Act for crop years 2000 and 2001. Because of its relatively high price, sesame has not generated any loan program benefits and was not expected to under the 2002 Act, even if it were designated as loan-eligible. Lack of designation as an "other oilseed," will eliminate the potential for a projected \$210,000 in direct payments to sesame producers.

Wool and Mohair

USDA does not publish official wool or mohair supply-use-price projections. Private analysts and university researchers expect that sheep and lamb numbers in the United States will continue on a long-term downward trend. Falling domestic demand for

lamb meat and strong competition from imports of foreign lamb will weigh on domestic production. Falling numbers of sheep and a focus on selection of sheep based on meat attributes are expected to result in falling wool production for the foreseeable future. However, tightening supplies of wool, both domestically and abroad, are expected to result in a slow rebound in wool prices from their current depressed levels. Consequently, wool program outlays are expected to decrease in subsequent years. Mohair production, prices and program outlays are expected to follow a similar path.

Wool program costs are expected to range from about \$25 million in 2002 to \$6.4 million in 2007. Mohair program costs are expected to range from about \$3.6 million in 2002, to \$2.0 million in 2007. Government outlays are expected to increase producer income about \$28 million in the initial program year, declining steadily to about \$8.4 million in 2007. Neither domestic use nor exports of wool and mohair are expected to be significantly impacted by the program.

Pulses (Dry Peas, Lentils, and Small Chickpeas)

The 2002 Act provides nonrecourse marketing assistance loans and loan deficiency payments to dry peas, lentils and small chickpeas for the first time. It is likely that the availability of these provisions will increase the supply for the 2002–2007 crops of dry peas and lentils resulting in a minor decrease in wheat production. Small chickpea production is expected to be unchanged due to planting flexibility provisions with no change in expected returns including program benefits. Producers of dry peas and lentils are expected to receive additional marketing loan/loan deficiency benefits of \$156 million over the 2002–2007 period. Wheat producers will receive \$374 million less in benefits (loan outlays—\$15 million lower and counter-cyclical payments—\$359 million lower) as the decline in acreage increases the market price of wheat which lowers its LDP and counter-cyclical payment rates. Hence, a net decrease of \$218 million in program outlays is expected. Likewise, taxpayer burden will decrease by \$218 million over the same period. Even though food use demand for dry peas and lentils is believed to be relatively price-inelastic, consumers are expected to gain \$12 million in additional income over the program period due to lower expected prices. The cost savings for feed purchases to livestock producers is expected to total \$13 million over the

program period as increases in feed pea production reduce prices.

Loan Deficiency-like Payments for Grazed Acreage of Wheat, Barley, Oats, and Triticale

The 2002 Act makes wheat, barley, oats and triticale available for grazing LDP's if the commodity is grazed. It is assumed that the availability of grazing LDP's will not affect the supply, demand, and price of these commodities for the 2002–2007 crops. Thus, these commodities LDP rates will not be impacted. Producers are expected to receive grazing LDP's of \$71 million over the 2002–2007 period, increasing projected total revenues the same amount. The additional grazing LDP's also increase program outlays and, therefore, taxpayer burden by \$71 million over the same period. The consumer impact will be negligible because crop and livestock prices are expected to be unchanged. Thus, food prices will not change.

Peanuts

Under the previously existing USDA peanut program producers delivered the peanuts to a buying point where the peanuts were graded and a check was written based on the weight of the peanuts adjusted for grade and minus fees. Quota peanuts received \$610 per ton and additional peanuts received a lower support rate (\$132 in 2001). Contract additional peanuts for export received a price less than \$610 but generally above the additional support price. The storage of loan collateral was paid by one of three Marketing Associations (Associations) authorized under the previous statute. The Associations managed the peanuts and any profits or loss were passed on to the producers of quota peanuts. Any losses incurred under the program were paid the following year by an assessment on producers.

The new 2002 Act peanut program requires producers to be more involved in the marketing process. They can apply for a market assistance loan and place the peanuts in storage, request a loan deficiency payment or sell the peanuts commercially. Peanuts placed under loan can be redeemed by the producer prior to loan maturity, and sold to commercial handlers. The loan will be repaid at a rate determined by the Secretary of Agriculture. If the peanuts are not redeemed they will be forfeited and become the property of CCC.

Producer income is not expected to decline significantly under the new program despite the gap between the \$355 loan rate and the old \$610 support

price. Under the 2002 Act producers may receive funds from three sources other than the marketing loan or the loan deficiency payment. These include a direct payment of \$36 per ton, compensation for lost quota at a rate of 11 cents per pound per year for 5 years, and a counter-cyclical payment equal to the difference between the market price (or market loan rate if it is higher) plus the direct payment of \$36 per ton and the \$495 target price. DCP is being promulgated under a rule to follow this one. Furthermore, all of the peanuts produced are eligible for the \$355 per ton marketing assistance loan or an LDP. Under the old program the average price received by the producer was a blend of the \$610 quota support for quota peanuts, the contract additional price and the support price for additional peanuts.

Total peanut production is expected to increase slightly under the new program. Consumers may pay slightly less for peanut products because of the projected lower peanut prices paid by manufacturers. However, because of the very inelastic price elasticity of demand for peanuts, this is expected to be insignificant.

Shellers and manufacturers will be paying significantly less for peanuts under the 2002 program. The actual price they pay will be determined by the market price of peanuts, which is expected to be significantly below the \$610 support price under the old program.

The loan repayment rate established by the Secretary will to some degree influence the market price for peanuts. This price will be determined on a weekly basis after several factors are evaluated. These factors may include, but not be limited to, marketing loan activity, domestic commercial prices and price and sales activity in the Western Europe and other international peanut markets. The process will be evaluated on a continuous basis and refined, as better information becomes available.

It is likely that the supply of peanuts will meet the demand for domestic edible peanuts in the U.S. This market is relatively stable and grows at about the same rate as the general population. Any significant growth in the production of U.S. peanuts will be in the export sector. This market will depend on the world equilibrium market price of peanuts.

The cost of marketing loans will be the cost of handling and storing the peanuts during the 9-month loan period plus any losses incurred disposing of forfeited peanuts. The storage and handling costs have been estimated by

the Congressional Budget Office at \$74 million during the 2002–2007 period. The cost of the loan deficiency portion of the program has been estimated at \$406 million over the 2002–2007 period. Because food use demand for peanuts is extremely price inelastic, consumers are expected to gain little in additional income over the program period, but peanut prices are not expected to drop.

There are many aspects of the 2002 Act that make the cost of the program open-ended. There is no limit on the amount of peanuts that can be produced. The price of peanuts will be determined in the market place and the cost of the LDP and the counter-cyclical payments could be significantly above the \$406 million if production increases and prices drop. U.S. peanuts are currently moving into international trade at about \$200 per farmer stock short ton, well below the average loan rate of \$355. Thus, while these estimates are valid based on what the Agency knows, the real economic effects of the new peanut program are very likely to vary.

For specific details or further information regarding the cost/benefit assessment contact Mr. Phil Sronce at 202–720–2711.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Reporting and record keeping requirements.

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

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

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

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

2. The title of part 1421 is revised as set forth above.

3. Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed) and Farm-Stored Peanuts (§§ 1421.1–1421.32) is removed and Subparts A, B and C are added in its place as set forth below.

4. Subpart—Grazing Payments for 2001 Crop of Wheat, Barley, or Oats

(§§ 1421.300–1421.307) is designated as Subpart D.

5. The subpart entitled Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 Through 1995 Crops (§ 1421.200) is removed.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

6. Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans and Seed (§§ 1421.5551–1421.5559) is designated as Subpart E and the heading is revised to read as set forth above.

7. For the convenience of the user, the table of contents for subparts A through E follows:

Subpart A—General

Sec.

- 1421.1 Applicability.
- 1421.2 Administration.
- 1421.3 Definitions.
- 1421.4 Eligible producers.
- 1421.5 Eligible commodities.
- 1421.6 Beneficial interest.
- 1421.7 Requesting marketing assistance loans and loan deficiency payments.
- 1421.8 Eligible quantity.
- 1421.9 Basic loan rates.
- 1421.10 Market rates.
- 1421.11 Spot checks.
- 1421.12 Production evidence.
- 1421.13 Handling payments and collections.
- 1421.14 Obtaining peanut loans.

Subpart B—Marketing Assistance Loans

- 1421.100 Applicability.
- 1421.101 Maturity dates.
- 1421.102 Adjustment of basic loan rates.
- 1421.103 Approved storage.
- 1421.104 Marketing assistance loan making.
- 1421.105 Farm-stored marketing assistance loans.
- 1421.106 Warehouse-stored marketing assistance loan collateral.
- 1421.107 Warehouse receipts.
- 1421.108 Transfers and reconcentrations.
- 1421.109 Personal liability of the producer.
- 1421.110 Repayments.
- 1421.111 Commodity certificate exchanges.
- 1421.112 Loan settlement.
- 1421.113 Foreclosure.
- 1421.114 Recourse loans.

Subpart C—Loan Deficiency Payments

- 1421.200 Applicability.
- 1421.201 Loan deficiency payment rate.
- 1421.202 Loan deficiency payment quantity.
- 1421.203 Personal liability of the producer.

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

- 1421.300 Applicability.
- 1421.301 Administration.
- 1421.302 Definitions.
- 1421.303 Eligible producer and eligible land.

- 1421.304 Time and method for application.
- 1421.305 Payment amount.
- 1421.306 Misrepresentation and scheme or device.
- 1421.307 Refunds; joint and several liability.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

- 1421.5551 General statement and administration.
- 1421.5552 Basic standards.
- 1421.5553 Bonding requirements for net worth.
- 1421.5554 Examination of warehouses.
- 1421.5555 Exceptions.
- 1421.5556 Approval of warehouses, requests for reconsideration.
- 1421.5557 Exemption from requirements.
- 1421.5558 Contract and application and inspection fees.
- 1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

8. The text of the new subparts A, B and C reads as follows:

Subpart A—General

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of barley, small chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, wool, mohair, oilseeds and other crops designated by Commodity Credit Corporation (CCC). These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payments (LDP) will be administered by the CCC. Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and LDP's.

(b)(1) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the marketing assistance and loan deficiency payment programs for the commodities specified in paragraph (a) of this section are available in Farm Service Agency (FSA) State and county offices. The forms for use in these programs will be prescribed by CCC.

(2) Loan deficiency payments shall be available for unshorn pelts, hay and silage.

(c) Marketing assistance loans and loan deficiency payments will not be available for any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Producers who produced eligible loan commodities are eligible for

marketing assistance loans or loan deficiency payments.

§ 1421.2 Administration.

(a) The marketing assistance loan and loan deficiency payment program shall be administered under the general supervision of the Executive Vice President, CCC and shall be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and employees thereof, cannot modify or waive any requirement of this part, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) For the 2001 crop year only, allow producers who violated the terms and conditions of the note and security agreement which resulted in the producer losing beneficial interest in the commodity before repaying the loan and the county committee determined the producer acted in good faith, to repay the loan at a rate that is the lesser of the loan plus interest; or the alternative repayment rate, as determined under § 1421.10, in effect on the date the beneficial interest was lost. In cases, where a locked-in repayment rate under § 1421.110 was applicable, the prescribed form is considered null and void.

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

(3) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the marketing assistance loan and loan deficiency payment program.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

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.

Commodity certificate exchange means the exchange, as provided for in part 1401 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Designated marketing association means a marketing association or cooperative, approved by the Secretary, to issue marketing loan benefits on behalf of CCC for peanuts.

Field direct loan deficiency payment means a loan deficiency payment issued to producers who:

(1) Will lose beneficial interest immediately at harvest or;

(2) Immediately feed the commodity during harvest.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Incorrect certification means the certifying of a quantity of a commodity for the purpose of obtaining a marketing assistance loan or a loan deficiency payment in excess of the quantity eligible for such marketing assistance loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

Loan commodities means wheat, corn, grain sorghum, barely, oats, rice, soybeans, other oilseeds, peanuts, wool, mohair, dry peas, lentils, and small chickpeas and other crops designated by CCC.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

Mohair means the hair sheared from a live Angora goat. Mohair does not

include pelts, or hides or mohair shorn from pelts or hides.

Oilseeds means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Other crops designated by CCC means with respect to eligibilities for benefits under this part:

(1) Those crops harvested as other than grain, such as silage, haulage, earlage;

(2) Specific crops designated for grazing; or

(3) As otherwise designated by CCC.

Pulse crops means any crop of dry peas, lentils, and small chickpeas as defined by CCC.

Servicing agent bank means the bank designated as the financial institution for a CMA or a designated marketing association.

Small chickpea means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS) and falls below a 20/64th sieve.

Unauthorized disposition means the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee.

Unauthorized removal means the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure, whether or not such structure is located on the producer's farm, without prior written authorization from the county committee.

Unshorn pelt means the removed skin and attached wool from a slaughtered lamb that has never been shorn.

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

(1) A pre-numbered, negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt issued by such warehouse recorded in a central filing system or system maintained in one or more locations which are approved by FSA to operate such system; or

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

Wool means the fiber sheared from a live sheep.

§ 1421.4 Eligible producers.

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

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop. With respect to wool and mohair, the producer must own, other than through a security interest mortgage, or lien, the sheep and goats that produced the wool and mohair respectively for a period of not less than 30 days.

(2) Comply with all provision of this part and:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation & Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures;

(v) 7 CFR part 1405—Loans, Purchases and Other Operations.

(3) Have made a acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Marketing assistance loans and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive marketing assistance loans or loan deficiency payments only if the minor meets one of the following requirements:

(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 marketing assistance loan or loan deficiency payment documents are signed by the guardian;

(3) Any note or loan deficiency payment program application signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

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

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a marketing assistance loan on farm-stored commodities if the producer has:

(i) Made a misrepresentation in connection with the marketing assistance loan or LDP program;

(ii) Previously not allowed a representative access to the site where commodities pledged as collateral for CCC loans were stored or otherwise failed to incorporate in the settlement of a marketing assistance loan; or

(iii) Failed to adequately protect the interests of CCC in the commodity pledged as collateral for a farm-stored loan.

(2) A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan or provide some other form of financial assurance to obtain a farm-stored loan.

(f) A CMA may obtain a marketing assistance loan and loan deficiency payment on eligible production of a loan commodity on behalf of its members who are eligible to receive marketing assistance loans or loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart, the term "producer" includes a CMA.

(g) In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon proper application to the FSA county service center that

disbursed the marketing assistance 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.

§ 1421.5 Eligible commodities.

(a) Commodities eligible to be pledged as collateral for a loan made under this part are:

(1) Barley, corn, grain sorghum, oats, canola, peanuts, soybeans, oilseeds, wheat, dry peas, lentils, small chickpeas, rice and other crops designated by CCC produced and mechanically harvested in the United States;

(2) Dual purpose sorghum varieties as determined by CCC; and

(3) Wool and mohair produced and shorn from live animals in the United States.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

(c)(1) To be an eligible commodity, the commodity must be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. A commodity containing vomitoxin, aflatoxin or *Aspergillus* mold may not be pledged for a loan made under this part, except as provided by CCC in the marketing assistance loan note and security agreement.

(2) The determination of class, grade, grading factor, 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, wheat and other commodities designated by CCC, shall be based upon the Official United States Standards for Grain, United States Standards for Whole Dry Peas, Split Peas, and Lentils for dry peas and lentils, United States Standards for Beans for small chickpeas and the United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection.

(ii) With regard to mustard seed, rapeseed, safflower seed, flaxseed 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 marketing assistance loans and loan deficiency payments for the oilseeds in this paragraph are available in USDA State and county FSA service centers.

(iii) With regard to farm-stored peanuts, shall be determined at the time of delivery to CCC by a Federal or State Inspector authorized or licensed by the Secretary.

(d) Eligible wool and mohair must:

(1) Have been produced and sheared from live sheep and goats, of domestic origin and located in the U.S. for a period of not less than 30 calendar days prior to shearing.

(2) Be of merchantable quality deemed by CCC to be suitable for loan and must have been shorn in the United States.

(e) When certifying acreage on farms in which an interest is held, the producer must provide acceptable evidence of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable for the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county FSA service center at the producer's expense, before commingling.

§ 1421.6 Beneficial interest.

(a)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, sheared or slaughtered in the case of unshorn pelts, 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, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing marketing assistance loan or loan deficiency payment shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the commodity occurs before or after harvest, shearing or slaughter so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the 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 marketing assistance loans or loan deficiency payments, including those cases where the producer takes either of the actions in paragraph (a)(2)(i) or (a)(2)(ii) of this section as follows:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, for such commodity if all other eligibility requirements are met and the option to purchase contains the following:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1421.6, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option;

(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 pays no advance payment amount or any incentive payment amount to enter into such contract to the producer, except as provided in part 1425 of this chapter.

(3) If marketing assistance loans and loan deficiency payments are made available to producers through an approved CMA under 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 marketing assistance 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.

(b) With respect to wool, mohair, dry peas, lentils and small chickpeas produced in the 2002 crop year, producers who lost beneficial interest before October 11, 2002 are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

(c) For peanuts produced in the 2002 crop year, producers who lost beneficial interest in the 2002 crop of peanuts are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

§ 1421.7 Requesting marketing assistance loans and loan deficiency payments.

(a) A producer must, unless authorized by CCC, request marketing assistance loans and loan deficiency payments at the county office that, under part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced.

(b) A marketing assistance loan or loan deficiency payment may be requested in person, by mail or electronic format designated by CCC. Forms prescribed by CCC may be obtained from the USDA, Farm Service Agency Web site.

(c) To receive marketing assistance loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before the applicable final loan availability date, as follows:

(1) March 31 of the year following the year in which the following crops are normally harvested: barley, canola, flaxseed, oats, rapeseed, and wheat.

(2) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, sunflower seed, dry peas, lentils, and small chickpeas.

(3) January 31 of the year following the year in which peanuts are normally harvested or wool and mohair are normally sheared.

(d) With respect only to loan deficiency payments for eligible loan commodities produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final loan availability for such payment is November 12, 2002.

§ 1421.8 Eligible quantity.

(a) With respect to marketing assistance loans and loan deficiency payments for:

(1) Farm-stored commodities, all determinations of weight, and quality, except as otherwise agreed to or required by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed for measured requests, if applicable or selected for spot-check for certified requests.

(2) Warehouse-stored commodities, all determinations of grade, weight and quality, except as otherwise agreed to or required by CCC, shall be determined at the time the loan or LDP is requested when acceptable documentation, under § 1421.106, accompanies the loan or LDP request.

(b)(1) A producer may, before the final date for obtaining a marketing assistance loan for a commodity, repledge as collateral for securing a marketing assistance loan any commodity that had been previously pledged as collateral for a marketing assistance loan, except with respect to:

(i) Commodities that have been acquired with commodity certificate exchanges under part 1401 of this chapter;

(ii) Commodities that have been redeemed at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as determined by CCC.

(iii) Commodities on which a loan deficiency payment has been received.

(2) The commodity repledged as security for the subsequent loan shall have the same maturity date, under § 1421.101 as the original loan.

(c)(1) The marketing assistance loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible harvested commodity, is in existence, and is in approved farm or warehouse storage, as determined by CCC. 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 marketing assistance loan and charges plus interest shall be refunded promptly by the producer.

(2) Marketing assistance loans may be disbursed to eligible producers who store eligible commodities in unlicensed storage facilities only if the producer agrees to redeem the marketing assistance loan on the date in which the loan is disbursed with a commodity certificate exchange.

(3) CCC shall limit the total marketing assistance loan quantity for a loan disbursement, or loan deficiency payment quantity for a loan deficiency payment, based on a subsequent increase in the quantity of an eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such marketing assistance loan or loan deficiency payment application. A producer may obtain a separate marketing assistance loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent

of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.9 Basic loan rates.

(a) Basic marketing assistance loan rates for a commodity may be established on a State, regional, county basis or other basis and may be adjusted by CCC to reflect quality and location and other factors applicable to the commodity and as otherwise provided in this section.

(b) The basic marketing assistance loan rates for wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, dry peas, lentils, small chickpeas, wool, mohair and other crops designated by CCC will be determined by CCC and made available at State and county offices.

(c)(1) For all commodities except rice, warehouse-stored loans shall be disbursed at levels based on the basic county marketing assistance loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) For rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel marketing assistance loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

§ 1421.10 Market rates.

(a)(1) For the 2002 through 2007 crops of barley, corn, grain sorghum, oats, wheat, dry peas, lentils, small chickpeas, oilseeds, and other crops as designated by CCC, a producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(i) The marketing assistance loan rate and charges, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the market prices at appropriate U.S. markets as determined by CCC, to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and

internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries. The alternative repayment rate may be adjusted to reflect quality and location for each crop of a commodity as follows:

(i) On a weekly basis in each county for oilseeds, except soybeans;

(ii) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat; and

(iii) On a weekly basis nationally for dry peas, lentils and small chickpeas.

(b)(1) For the 2002 through 2007 crops of peanuts, wool and mohair, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(i) The loan rate and charges interest, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce periodically an alternative repayment rate for peanuts, wool, and mohair to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

(c)(1) The prevailing world market price for a class of rice shall be determined by CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and 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.

(2) Export transactions involving rice and all other related market information will be monitored on a continuous basis. Relevant information may be obtained for this purpose from USDA field reports, international organizations, public or private research entities, international rice brokers, and other sources of reliable information.

(3) The prevailing world market price for a class of rice adjusted to U.S. quality and location the adjusted world

price (AWP), as determined under paragraph (c)(5) of this section, shall apply to this section.

(4) The adjusted world price for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined under paragraphs (a)(2) and (3) of this section 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 charges, storage, and administrative costs.

(ii) The price determined under paragraph (c)(4)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in milled rice by deducting the world value of broken kernels it contains, with the value of the broken kernels determined by multiplying the quantity of broken kernels (4 percent per hundredweight) by the world market value of 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 under paragraph (c)(4)(ii) of this section 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 percent per hundredweight).

(iv) The price determined under paragraph (c)(4)(iii) of this section 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 under paragraph (c)(4)(iv) of this section 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 under paragraph (c)(4)(v) of this section 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.

(5)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and announced, to the extent practicable, on or after 3:00 p.m. Eastern Standard time each Tuesday, or more frequently, as determined necessary by CCC, continuing through the later of:

(A) The last Tuesday of July 2007; or

(B) The last Tuesday of the latest month the 2007-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 3:00 p.m. Eastern Standard time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(6) 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 2:00 p.m. Eastern Standard time and the time of the world price announcement.

§ 1421.11 Spot checks.

(a) CCC may inspect the collateral for marketing assistance loans, and producers with such loans shall allow CCC access to the farm and storage facility as necessary to conduct collateral inspections, or "spot checks" as they are called. Spot checks will verify that the quality and quantity of farm-stored commodities pledged as collateral for marketing assistance loans are maintained by the producer.

(b) Loan deficiency payments are selected for spot check to ensure that all eligibility requirements, as required by CCC, are met in order to receive such loan deficiency payment.

(c) Producers must present production evidence for commodities acceptable to CCC when a spot check is conducted.

§ 1421.12 Production evidence.

(a) Producers who redeem marketing assistance loan collateral at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as CCC determines or receives a loan deficiency payment may be required to provide CCC with:

(1) Evidence of production of the collateral such as:

(i) Evidence of sales,

(ii) Delivery evidence,

(iii) Load summaries from warehouse, processor, or buyer,

(iv) Warehouse receipts

(v) Paid measurement service

(vi) Spot check measurements with paid measurement service

(vii) Cleaning tickets for seed (viii) Scale tickets, if not issued by the producer for the producer's own production

(ix) Core tests for wool and mohair

(x) Maximum eligible quantity as determined by CCC

(2) The storage location of the collateral that has not been otherwise disposed of and access to such collateral;

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity;

(4) In the case of wool and mohair, permission to examine and inspect the sheep herd; and

(5) Any other evidence requested by the county FSA service center or the Deputy Administrator, FSA.

(b) A producer who fails to provide acceptable evidence of production shall be required to repay the market gain or loan deficiency payment and charges, plus interest, as determined by CCC.

§ 1421.13 Handling payments and collections.

(a) Amounts of \$9.99 or less due a producer will be paid only upon the producer's request.

(b) Deficiencies of \$9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1421.14 Obtaining peanut loans.

(a) Peanuts loans to individual producers may be obtained through:

(1) County offices; or

(2) A designated Marketing Association or a CMA approved by CCC.

(b) The loan documents shall not be presented for disbursement unless the peanuts pledged as collateral for the

marketing assistance loan is eligible in accordance with § 1421.8. If the peanuts were ineligible at the time of the disbursement, the total amount disbursed under loan, or as an LDP, plus charges and interest shall be refunded promptly.

Subpart B—Marketing Assistance Loans

§ 1421.100 Applicability.

This subpart provides the terms and conditions for marketing assistance loans offered by CCC. Additional terms and conditions are also in the note and security agreement which the producer must sign to receive such marketing assistance loans.

§ 1421.101 Maturity dates.

(a)(1) All marketing assistance loans shall mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed and approved except, for transferred marketing assistance loan collateral. The maturity date for transferred marketing assistance loan collateral will be the maturity date applicable to the original loan that was transferred.

(2) CCC may at any time call the marketing assistance loan by notifying the producer at least 30 days in advance of the accelerated maturity date.

§ 1421.102 Adjustment of basic loan rates.

(a) Basic loan rates are established under § 1421.9 and will be adjusted or not adjusted as follows:

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county marketing assistance loan rate.

(2) For farm-stored commodities where the test weight discounts are on the:

(i) Crop year specific schedules of premiums and discounts, the loan rate shall be adjusted for the higher of the discount for test weight or grade based on test weight.

(ii) Additional schedule of discounts, the marketing assistance loan rate shall be reduced to 20 percent of the county average marketing assistance loan rate.

(3) With respect to commodities harvested, excluding silage or hay, as other than grain and pledged as collateral for a nonrecourse marketing assistance loan, the marketing assistance loan rate shall be discounted to 30 percent of the base county loan rate.

(4) With respect to farm-stored wheat, the basic county marketing assistance

loan rate shall not be adjusted to reflect the protein content.

(5) With respect to Segregation 2 and 3 peanuts as determined by CCC, the marketing assistance loan rate shall be discounted to 35 percent of the applicable loan rate.

§ 1421.103 Approved storage.

(a) Approved farm storage is:

(1) A storage structure located on or off the farm, (excluding public warehouses that do not enter into an agreement with CCC), that CCC determines to be controlled by the producer which affords safe storage of collateral pledged for a marketing assistance loan;

(2) If determined and announced to be available in a State or county, on ground storage and other temporary storage structures approved by CCC.

(3) As determined by CCC, temporary approved storage may also include:

(i) On-ground storage or;

(ii) Other storage arrangements.

(b) CCC may reduce the quantity of a commodity pledged as collateral for a loan made available under paragraph (a)(2) of this section to not more than 75 percent of such otherwise eligible quantity in order to protect the interests of CCC. CCC may also limit the length of time the commodity may be stored on-ground or in temporary structures to not more than 90 days. A marketing assistance loan made with respect to such commodity which is not moved to a structure specified in (a)(2) within 90 days of the date the loan was disbursed may be called by CCC.

(c) Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect that is approved by CCC for price support purposes. Such a warehouse is referred to in this by part as an approved warehouse. The names of approved warehouses may be obtained from the FSA, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205, from State and county offices, or at the FSA web site on the Internet.

§ 1421.104 Marketing assistance loan making.

(a)(1) The FSA county service center shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for marketing assistance loans.

(i) The cost of filing and recording shall be paid by CCC.

(ii) The cost for terminating the financing statement before the end of the term shall be paid by the producer.

(2) If there are any liens or encumbrances on the commodity,

waivers that fully protect the 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 commodity after the marketing assistance loan is approved.

(b) Fees, charges, and interest must be paid by the producer to CCC at a rate CCC determines. Such fees, charges, and interest include:

(1) A non-refundable loan service fee;

(2) Interest that accrues on a loan under part 1405 of this chapter;

(3) For each soybean crop, 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 CCC determines when it acquires the commodity and shall be equal to one-half of 1 percent of the amount determined under § 1412.112.

(c) For peanuts, charges associated with warehouse stored loans including but not limited to storage and in charges, as determined by CCC are paid by CCC to the producer.

(d) The cost of terminating a financing statement shall be paid by the producer.

§ 1421.105 Farm-stored marketing assistance loans.

(a) The producer of a commodity pledged as security for a farm-storage loan shall:

(1) Certify the quantity of such commodity on the loan application, or;

(2) Have such quantity measured by CCC at the measurement service rate established by CCC.

(b) The State committee may establish a marketing assistance loan percentage not to exceed a percentage CCC establishes or it may apply quality discounts to the loan rate in each 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 marketing assistance loan percentage should be reduced below the maximum marketing assistance loan percentage or the quality discounts should be applied to the basic county marketing assistance loan rate to provide CCC with adequate protection. Marketing assistance loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions. Percentages established or loan rates adjusted for quality under this section shall apply

only to new marketing assistance loans and not to outstanding marketing assistance loans. In determining loan percentages or the necessity to apply quality discounts, the State committee shall consider any factor at its discretion, including the following:

- (1) General crop conditions;
- (2) Factors affecting quality peculiar to an area within the State; and
- (3) Climatic conditions affecting storability.

(c) An eligible quantity of a commodity that is commingled with an ineligible quantity of the commodity is not eligible to be collateral for a marketing assistance loan unless the producer, when requesting a marketing assistance loan designates all structures that may be used for storage of the marketing assistance loan collateral.

(1) In such cases, the producer is not required to obtain prior written approval from the county committee before moving marketing assistance loan collateral from one designated structure to another designated structure.

(2) In all other instances, if the producer intends to move marketing assistance loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be written and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling. Prior to commingling, with respect to wool and mohair, a representative of the county committee may determine an average production of the wool and mohair in a manner approved by CCC.

(d)(1) Two or more producers may obtain:

(i) A single joint marketing assistance loan for commodities that are stored in the same farm storage facility; or

(ii) Individual marketing assistance loans for their share of the commodity that is commingled in a farm storage facility with commodities owned by other producers if such other producers execute an agreement that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a marketing assistance loan shall be liable for any damage incurred by CCC for the deterioration or unauthorized removal or disposition of such commodities.

(2) In such cases, each producer must execute a note and security agreement

with CCC, and each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the requirements of this part. Each producer is also liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to their share in the commodity pledged as collateral. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) A producer, when requesting a marketing assistance loan, shall designate in writing specific storage structures.

(2) The producer is not required to request prior approval before moving marketing assistance loan collateral between such designated structures.

(3) Movement of marketing assistance loan collateral to any other structures not designated or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to administrative actions.

(4) The producer is responsible for any loss in quantity or quality of the farm-stored commodity pledged as collateral.

(5) CCC shall not assume any loss in quantity or quality of the marketing assistance loan collateral for farm-stored loans.

§ 1421.106 Warehouse-stored marketing assistance loan collateral.

(a) A commodity may be pledged as collateral for a warehouse-stored marketing assistance loan in the quantity delivered to CCC for storage at a warehouse that meets standards for approval at part 1423 of this chapter. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) Two or more producers may obtain a single joint marketing assistance loan for commodities stored in an approved warehouse if the warehouse receipt pledged as collateral is issued jointly to the producers.

(c) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to such producer's claimed share in the commodity

pledged as collateral for the marketing assistance loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(d) Handling and storage rates that CCC has approved to be deducted from marketing assistance loan proceeds are available in USDA State and county FSA service centers. Deductions shall be based upon entries on the warehouse receipt or supplemental certificate, but the storage rate shall not exceed the storage rate CCC has approved. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the commodity covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(e) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start;

or

(3) The day following the date through which storage charges have been paid.

(f) For hard red winter and hard red spring wheat tendered to CCC and stored in an approved warehouse, producers must obtain official protein content determinations or, as CCC determines is acceptable, protein content may be determined by mutual agreement between the producer and the warehouse operator. Costs of determinations shall not be paid by CCC.

(g) For warehouse-stored peanuts, CCC will pay storage charges and in-charges and other fees as determined by CCC, to ensure proper storage of CCC loan collateral. The beginning date to be used for computing storage deductions on the CCC peanut loan collateral 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.

(4) The date all required marketing assistance loan documents are received in the county office.

§ 1421.107 Warehouse receipts.

(a) Warehouse receipts tendered to CCC under § 1421.3 for marketing assistance loans must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipt must be properly endorsed on its reverse side certifying that the crop is free of encumbrances in order for title to vest in the holder. Receipts must be issued by an 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.

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for a marketing assistance loan if such warehouse is licensed under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured under such agreement. CCC shall not be responsible for the cost of such insurance.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, for rice, such receipt must also state the milling yield of the rice, and for wool, such receipts must also state the yield and micron of the wool.

(f) With respect to peanuts, a warehouse receipt must be submitted exhibiting grade, type, and segregation for peanuts tendered to CCC.

(g)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse

receipt, must be issued under the applicable CCC 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 be available at State and county offices and the Kansas City Commodity Office.

(h) If a warehouse receipt indicates that the commodity tendered for loan grades "infested" or "contains excess moisture", or both, the receipt must be accompanied by a supplemental certificate in order for the commodity to be eligible for a marketing assistance loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "infested" and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the "infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When 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 under 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 under 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;

(7) Wheat: 13.5 percent; and

(8) Peanuts: 10.0 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(1) Canola: 10.0 percent;

(2) Flaxseed: 9.0 percent;

(3) Mustard Seed: 10.0 percent;

(4) Rapeseed: 10.0 percent;

(5) Safflower Seed: 10.0 percent;

(6) Sunflower Seed: 10.0 percent;

(7) Crambe: 10.0 percent; and

(8) Sesame Seed: 10.0 percent.

(i)(1) If, under paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts that are stored in an approved warehouse that is operating under a CCC storage agreement may be subject to a lien for warehouse charges as specified in the applicable storage agreement. For all commodities except peanuts, the producer who pledged such a receipt as collateral for a loan under this part shall pay to CCC all costs incurred by CCC as result of the existence of the lien. 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.

(j) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed under paragraph (f) of this section.

§ 1421.108 Transfers and reconcentrations.

(a) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the FSA county service center.

(b) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the marketing assistance loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement or a calculation of average production of wool and mohair, such measurement or calculation to be made by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(c) Upon the filing of the Reconcentration Agreement and Trust Receipt by the producer and warehouse operator, CCC may, during the marketing assistance loan period, approve the reconcentration in another CCC-approved warehouse for 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 in the Reconcentration Agreement and Trust Receipt. A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

- (1) The principal amount of the marketing assistance loan and charges plus interest and applicable charges; or
- (2) If CCC so announces, an amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity

pledged as collateral for such marketing assistance loan.

§ 1421.109 Personal liability of the producer.

(a) When a producer obtains a commodity marketing assistance loan, the producer agrees, in writing, not to:

(1) Provide an incorrect certification of the quantity or make any fraudulent or erroneous representation for the marketing assistance loan; or

(2) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC.

(3) The violation of the terms and conditions of the note and security agreement, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) Such violations as are referred to in paragraph (a)(3) of this section may include:

- (1) Incorrect certification;
- (2) Unauthorized removal; and
- (3) Unauthorized disposition.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for such violations. Accordingly, if the county committee determines that the producer has committed such violations, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(d) In the case of violations, 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 marketing assistance loan rate applicable to the loan note for the first offense; or
- (ii) 25 percent of the marketing assistance loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the marketing assistance loan rate applicable to the loan note.

(e) For violations and the liquidated damages under paragraph (d)(1) of this section, the county committee shall:

(1) Require repayment of the marketing assistance loan quantity incorrectly certified or the loan quantity removed or disposed at the lesser of:

- (i) The applicable loan principal, and charges, plus interest or;
- (ii) The announced alternative repayment rate in effect on date the

violation occurred, plus 15 percent of the loan rate, as otherwise determined by the Deputy Administrator, and

(2) If the producer fails to pay such amount within 30 days from the date of notification, accelerate the marketing assistance loan in default and require repayment of all loan principal, charges, and interest.

(f) For violations committed and the liquidated damages were assessed under paragraph (d)(2) of this section, the county committee shall call the loan involved in the violation, and require repayment of the entire loan principal, charges and interest.

(g) The county committee may waive the liquidated damages if it determines that the violation was inadvertent, accidental, and unintentional.

(h) If, for any violation, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call 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 period CCC designates.

(i) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken.

(j) If the loan is accelerated, the producer may not repay the loan at the lower alternative loan repayment rate and may not utilize commodity certificate exchanges, unless authorized by CCC.

(k) Producers rejected for a farm-stored loan under this section may apply for a warehouse-stored loan.

(l) The loan plus other charges shall be payable to CCC upon demand if a producer:

(1) Makes any fraudulent representation in obtaining a marketing assistance loan, maintaining, or settling a loan; or

(2) Disposes or moves the loan collateral without the approval of CCC.

(m) A producer shall be personally liable for damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other

substances poisonous or harmful to humans or animals or property.

(n) If the amount disbursed under a marketing assistance loan or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the marketing assistance loan is less than the amount required under this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(p) In the case of joint loans 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.

(q) Any or all of the liquidated damages assessed may be waived as determined by CCC.

§ 1421.110 Repayments.

(a) CCC may allow a producer to repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for a crop; or

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(b)(1) On a form prescribed by CCC, a producer may request to lock in the applicable repayment rate for a period of:

(i) 60 calendar days; or

(ii) not less than 14 calendar days before the maturity date of the loan, but not both.

(2) The request to lock in the applicable repayment rate must be received in the FSA county service center that disbursed the loan.

(3) The repayment rate that is locked in is the rate in effect when the request to lock in is approved.

(4) The repayment rate may be locked in on outstanding farm-stored or warehouse-stored loans.

(5) The repayment rate that is locked in will expire the earlier of:

(i) 60 calendar days from date of approval; or

(ii) 14 calendar days before loan maturity.

(6) The requests can only be completed one time for a designated quantity.

(7) The requests can be made in person or by facsimile.

(8) The requests cannot be canceled, terminated, or changed after approval.

(9) The locked-in applicable repayment rate will not transfer to any

loan disbursed outside of the originating county where the commodity was stored.

(10) Once a repayment rate is locked in it cannot be extended.

(c) If a producer fails to repay a marketing assistance loan within the time prescribed by CCC under the terms and conditions of the request to lock in a market loan repayment rate, the producer may repay the loan:

(1) On or before maturity, at the lesser of:

(i) Principal plus interest as determined by CCC;

(ii) The repayment rate in effect on the day the repayment is received in the FSA county service center.

(2) After maturity at principal plus interest.

(d) When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval on a CCC approved form and comply with the terms and conditions of such form, to remove a specified quantity of the commodity from storage. Approval does not constitute release of CCC's security interest in the commodity or release of producer liability for amounts due CCC for the marketing assistance loan indebtedness if payment in full is not received by the county office. Failure to repay a marketing assistance loan within the time period prescribed by CCC in the case of a farm-stored loan and delivery of the pledged collateral to a buyer, is a violation of the agreement. In the case of such violation, the producer must repay the loan principal and interest or another amount as determined by the Deputy Administrator, FSA, under § 1421.109.

(e) The producer may obtain county committee approval of a release of all or part of pledged collateral for a warehouse-stored loan at or before the maturity of such loan by paying to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest, or

(2) An amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the collateral for such loan.

(f) A partial release of marketing assistance loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the marketing assistance loan shall be released only to the producer. However, such receipt may be released to persons designated in a written authorization that is filed with the county office by

the producer within 15 days before the date of repayment.

(g) The note and security agreement shall not be released until the marketing assistance loan has been satisfied in full.

(h)(1) If the commodity is moved from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable under § 1421.109(b), unless the removal occurred on a non-workday and the producer notified the county office on the next workday of such removal.

(2) Any loan quantities involved in a violation of § 1421.109 must be repaid under § 1421.109(e).

§ 1421.111 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:

(1) The loan rate and charges, plus interest applicable to the loan;

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.110.

(d) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines.

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral.

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

§ 1421.112 Loan settlement.

(a) The value of the settlement of marketing assistance loan shall be made by CCC on the following basis:

(1) For nonrecourse marketing assistance loans, the schedule of premiums and discounts for the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the 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) For recourse marketing assistance loans, the proceeds from the sale of the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the proceeds received from the sale of the commodity are greater than the sum of the amount due, plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to a secured creditor of the producer.

(3) If CCC sells the commodity described in paragraphs (a)(1) or (a)(2) of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC for eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(c) Settlements made by CCC for peanuts acquired by CCC and stored in an approved warehouse shall be based on the settlement value at the time of the loan disbursement and the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents subject to adjustments for changes in quality and other factors.

(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC as CCC instructs. Settlement shall be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic marketing assistance loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(d) In all cases, settlements may be adjusted for changes in quality and other factors affecting the value of the commodity.

§ 1421.113 Foreclosure.

(a)(1) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the

marketing assistance loan shall immediately vest in CCC.

(2) Upon maturity and nonpayment of a farm-stored marketing assistance loan, title to the unredeemed collateral shall automatically transfer to CCC upon CCC demand.

(3) When CCC acquires title to the unredeemed collateral, CCC shall not pay for any market value that such collateral may have in excess of the marketing assistance 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 plus charges, and interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto when, how, and upon terms as CCC determines. Disposition may also be 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.

(1) The value of settlement for a farm-stored commodity removed by CCC from storage and shall be as provided in § 1421.112.

(2) If a deficiency exists after the collateral is sold, a claim for such deficiency will be established in accordance with part 1403 of this title.

§ 1421.115 Recourse marketing assistance loans.

(a) CCC shall make recourse marketing assistance loans available to eligible producers of high moisture corn, high moisture grain sorghum and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

(b) Repayment must be paid in full on or before the loan maturity date.

(c) Recourse marketing assistance loan collateral may not be delivered or forfeited to CCC in satisfaction of the loan indebtedness.

Subpart C—Loan Deficiency Payments

§ 1421.200 Applicability.

(a) During the loan availability period, loan deficiency payments will be made available to eligible producers when the alternative repayment rate is less than the applicable county loan rate.

(b) To be eligible to receive loan deficiency payments a producer must:

(1) Comply with all marketing assistance loan eligibility including beneficial interest requirements.

(2) Agree to forgo obtaining such loan, if applicable; and

(3) File in person, by mail or electronically a request for payment on a form prescribed by CCC; and

(4) Otherwise comply with all program requirements.

(c) A producer must submit a completed request for:

(1) A field direct loan deficiency payment to CCC on or before the date of harvesting or shearing a quantity of an eligible commodity, provided further that the producer must have beneficial interest in such quantity on the date the commodity is harvested or sheared.

(2) A field direct loan deficiency payment to CCC for unshorn pelts on or before the date of slaughter of the quantity of live lambs, before the loss by the producer of beneficial interest in the lamb and the unshorn pelt produced from such lamb.

(3) All other types of loan deficiency payment requests after harvest or shearing and before beneficial interest is lost in the commodity, but not later than the loan availability date.

(d) For unshorn pelts, the lamb must be owned for a period of not less than 30 days in advance of the application and sold for immediate slaughter or slaughtered for personal use. Producers must submit acceptable production evidence to CCC under § 1421.12 at the time of request. Producers who do not sell lambs for immediate slaughter are ineligible for a loan deficiency payment.

§ 1421.201 Loan deficiency payment rate.

(a) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans under § 1421.10.

(b) Such rate shall be the amount determined:

(1) For loan deficiency payments other than field direct:

(i) On the day the producer submits a completed request for a loan deficiency payment to the FSA county service center;

(ii) Using the rate in effect for the FSA county service center where the commodity is stored.

(2) For field direct loan deficiency payments:

(i) On the date the commodity was delivered to the processor, buyer, warehouse or CMA;

(ii) Using the rate in effect for the FSA county service center where the farm records are kept.

(3) For rice loan deficiency payments, the adjusted world price under § 1421.10(c).

(c) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan

deficiency payment rate, as determined under paragraph (b) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

§ 1421.202 Loan deficiency payment quantity.

(a) A loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity under § 1421.12.

(b) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in the same storage facility. Two or more producers may obtain individual loan deficiency payments for their share of the commodity that is stored commingled in a farm storage facility with commodities for which a loan deficiency payment has been requested and shall be liable for any damage incurred by CCC for incorrect certification of such commodities under § 1421.203.

(c) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in an 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.

§ 1421.203 Personal liability of the producer.

(a) When a producer requests a loan deficiency payment, the producer agrees:

(1) When signing the Loan Deficiency Payment Application and Certification or the 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 purpose; and

(2) That violation of the terms and conditions of the loan deficiency payment request, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible, if CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(b) If CCC determines that 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 deficiency payment rate for the first offense; or

(ii) 25 percent of the loan deficiency payment rate for the second offense.

(2) Did not act in good faith about 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 deficiency payment rate.

(c) For violations to which paragraph (b)(1) of this section applies, the producer must repay the loan deficiency payment applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amounts within 30 days from the date of notification, the producer must repay the entire loan deficiency payment and charges plus interest.

(d) For violations to which paragraph (b)(2) of this section applies, the producer shall repay of the entire loan deficiency payment and charges plus interest.

(e) CCC may waive the liquidated damages taken applicable to paragraph (b) of this section if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

(f) If, for any violation to which paragraph (b) of this section applies, the county committee determines that CCC's interest is not or will not be protected, the county committee shall:

(1) Call the producer's farm-stored loans;

(2) Deny future farm-stored loans for the current and 2 following crop years;

(3) Deny loan deficiency payments for the current and 2 following crop years unless production evidence is presented to CCC. Depending on the severity of the violation, the county committee may deny future farm-stored loan and loan deficiency payments without production evidence.

(g) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative action will be taken under this section.

(h) If the amount disbursed under loan deficiency payments exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(i) In the case of joint 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 loan deficiency payment application.

(j) Any or all of the liquidated damages assessed under the provisions of paragraph (b) of this section may be waived as determined by CCC.

9. The heading of newly designated subpart D is revised to read as set forth below, and subpart D is further amended as follows:

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

A. In § 1421.300, paragraph (a) is revised to read as follows:

§ 1421.300 Applicability.

(a) The regulations in this subpart are applicable to the 2002–2007 crops of eligible acreage planted to wheat, barley, oats or triticale that is grazed by livestock and not harvested in any other manner. This subpart sets forth the terms and conditions under which a grazing payment in lieu of a loan deficiency payment will be made by CCC.

* * * * *

B. In § 1401.303, paragraphs (a), (d) and (e) are revised and paragraph (f) is added to read as follows:

§ 1421.303 Eligible producer and eligible land.

(a) To be an eligible producer for a payment under this subpart, the person must be a producer of wheat, barley, oats, or triticale in the 2002 through 2007 crop years. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in parts 12, 718, 1400, and 1405 of this title. A person will not be considered the producer of the crop unless that person was responsible for the planting of the crop and had the risk of loss in the crop at all times, including, at the time of planting and the time of the request for a payment under, this subpart.

* * * * *

(d)(1) A producer must, at the time of the agreement made under this part to obtain a payment, meet all other eligible criteria for obtaining loan deficiency payments.

(2) For producers of triticale who obtain a payment under this subpart the

producer must enter into an agreement with CCC to forgo any harvesting of triticale on the acreage for which such a payment is made.

(e)(1) No payment will be made if the crop could not have been harvested because of weather conditions or any other reason.

(2) The producer must retain the control, title and risk of loss in the commodity for which the payment is sought from the date of planting through the date on which mechanical harvesting of the crop would normally occur.

(f) Producers who elect to graze 2002–2007 crop wheat, barley, oats, or triticale will not be eligible for an indemnity under the Federal Crop Insurance Program provision of Chapter IV of this title or a payment under Noninsured Crop Assistance Program authorized under part 1437 of this chapter.

C. In § 1421.304 revise the first sentence to read as follows:

§ 1421.304 Time and method for application.

Application for the program provided in this subpart must be received, at the county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would normally be harvested and no later than the final loan availability date as determined in accordance with § 1421.5. * * *

D. In § 1421.305 revise paragraphs (a), (c) and (f) to read as follows:

§ 1421.305 Payment amount.

(a) The grazing payment rate shall be the loan deficiency payment in effect for the farm on the date which the producer submits a complete program application to CCC. For triticale, the loan deficiency payment rate will be equal to the rate for the predominant class of wheat in the county where the farm is located in effect as of the date of the application is filed.

* * * * *

(c) The payment yield shall be the yield in effect for the calculation of direct payments under part 1412 of this chapter. In a case of a farm for which

a farm program payment yield is unavailable for a covered commodity, an appropriate payment yield for the covered commodity on the farm will be determined by CCC taking into consideration the farm program payment yields applicable to the commodity using three (3) similar farms. For triticale, the payment yield shall be the yield for wheat from three (3) similar farms in that county.

* * * * *

(f) To receive the payment, the eligible producer must submit a request for payment on an application form as prescribed by CCC or FSA. The application may be obtained from the county FSA office, or from the USDA or FSA web site in the Internet. The form must be submitted to the county by the close of business on or before March 31 of the applicable crop year.

Signed in Washington, DC, on October 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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