Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

Presidential Documents

Title 3—

The President

Executive Order 12469 of March 26, 1984

East-West Foreign Trade Report

By the authority vested in me as President by the Constitution and the statutes of the United States of America, including section 301 of Title 3 of the United States Code (3 U.S.C. 301), and section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), in order to provide for more efficient reporting to the Congress, it is hereby ordered as follows:

Section 1. The reporting functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), as transferred to the President by section 5(c) of Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note), are delegated to the United States Trade Representative.

Sec. 2. This order is effective upon publication in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
March 26, 1984.

[FR Doc. 84-8486
Filed 3-26-84; 4:30 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 427

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1984 and succeeding crop years by: (1) Changing the policy to make it easier to read and understand; (2) eliminating the reduction in production guarantee for unharvested acreage; (3) eliminating the substitute crop provision; (4) adding a 60-day claim for indemnity provision; (5) clarifying the provision determining production to count when small grains are growing with other planted or volunteer crops; (6) adding a section regarding appraisals following the end of the insurance period for unharvested acreage; (7) changing the cancellation and termination for indebtedness dates; (8) revising the unit definition to provide for unit determination when the acreage report is filed; (9) adding three sections concerning descriptive headings, determinations, and notices; and (10) making format and language corrections for purposes of clarification.

In addition, FCIC issues a new subsection in the oat crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring oats in accordance with Departmental Regulations 1512–1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

EFFECTIVE DATE: April 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this action and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is February 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small business, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance program to which these regulations apply are: Title-Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Wednesday, April 13, 1983, FCIC published an interim rule at 48 FR 15869, revising and reissuing the Oat Crop Insurance Regulations (7 CFR Part 427) in accordance with the provisions of Departmental Regulation 1512–1. Public comment was solicited following the publication and the regulations were scheduled for review; however, no comments were received. In reviewing these regulations prior to issuing this final rule, it was determined that the control numbers assigned by OMB to information collection requirements should be added to the regulations in addition to two other sections regarding determinations and notices. None of these additions have any effect on the terms and conditions of the policy for insuring oats as contained in the regulations but merely serve to clarify determinations made by FCIC and notices required by the policy, and to comply with OMB regulations.

With the exception of the additions referred to above, the interim rule as published is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 427

Crop Insurance, Oats.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1984 and succeeding crop years, to read as follows:

PART 427—OAT CROP INSURANCE

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 427.1 Availability of oat in crop insurance.

Insurance shall be offered under the provisions of this subpart on oates in counties within limits prescribed by, and in accordance with the provisions of the

Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which oat insurance will be offered.

§ 427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for oates which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 427.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 427) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 427.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 427.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the oat insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but cwhich the insured person believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured persons relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 427.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the oat crop as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service office.

§ 427.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the oat crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office in the county and publishing a notice in the **Federal Register** upon the Manager's determination that no selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Oat contracts in.effect for the 1983 crop year are amended by the substitution of the 1984 contract and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for the 1984 crop year.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, § 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Oat Insurance Policy for the 1984 and succeeding crpp years, are as follows:

Department of Agriculture

Federal Crop Insurance Corporation

Oat—Crop Insurance Poilcy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake; or

(7) Volcanic eruption;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good oat farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

a. Crop, acreage, and share insured.

a. The crop insured shall be oats seeded for harvest as grain, oats seeded in the same manner for harvest as silage or hay, and grain mixtures in which oats are the predominant grain; which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured by each crop year shall be oats planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured oats at the time of planting.

d. We do not insure any acreage:

(1) Planted with flax or vetch;

(2) Where the farming practices carried out are not in accordance with the farming

pratices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) which is destroyed and it is practical to replant to oats but such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form, to coverage reduction;

(6) Of volunteer oats; or

(7) Planted to a type or variety of oats not established as adapted to the area or excluded by the actuarial table.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good oat irrigation practice; and

(2) Any loss of production caused by failure to carry out a good oat irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production or hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice. You shall report on our form:

a. All the acreage of oats in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any oats planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.

[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the oats are planted except that in counties with an April 15 cancellation date, insurance on fall planted oats shall attach April 16 following planting, provided there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The date shown below of the calendar year in which oats are normally harvested:

(a) Alaska—September 25;

(b) All other states—October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the oats on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use;

(c) You want to harvest the oats for silage or hay. (After such notice is given, we shall appraise the potential grain production. *However*, if we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes); or

(d) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the oats and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined, and a representative sample of the unharvested wheat (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the oats on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the oats which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the oats on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of oats on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of oats to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature oat production:

(a) Which otherwise is not eligible for quality adjustment and which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Which, due to insurable causes, does not grade No. 4 or better, or is graded smutty, garlicky, or ergoty, in accordance with the Official United States Grain Standards, shall be adjusted by:

(i) Dividing the value per bushel of such oats by the price per bushel of U.S. No. 2 oats; and

(ii) Multiplying the result by the number of bushels of such oats.

The applicable price for No. 2 oats shall be the local market price on the earlier of the day the loss is adjusted or the day such oats were sold.

(2) Any mature production from other crops growing in the oats shall be counted as oats on a weight basis.

(3) Appraised production to be counted shall include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of oats becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested oats on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the oats are damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request To Exclude Hail And Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the oats are planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all oats produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

1. If deducted from an indemnity claim shall be the date you sign the claim; or

2. If deducted from payment under another program administered by the United States Department of Agriculture shall be the date the payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
New Mexico except Taos County; Oklahoma; and Texas.	August 31.
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.	September 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties.	October 31.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Taos County, New Mexico; and all other states.	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for an crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of a notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of oat crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding oat insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the oats are normally grown and shall be designated by the calendar year in which the oats are normally harvested.

d. "Harvest" of oats on the unit means the completion of combining, threshing or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the oats or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of oats in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the oats on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A—Counties Designated for Oat Crop Insurance

In accordance with the provisions of 7 CFR 427.1, the following counties are designated for oat crop insurance:

Alabama

Baldwin

Arkansas

Arkansas

California

Modoc
Siskiyou

Colorado

Alamosa

Idaho

Kootenai

Illinois

Boone
Bureau
Carroll
De Kalb
Henry
Jo Daviess
Kane
Knox
LaSalle
Lee
McHenry
Mercer
Ogle
Stephenson
Warren
Whiteside
Will
Winnebago

Iowa

(All counties)

Kansas

Dickinson
Marion

Michigan

Allegan
Alpena
Barry
Calhoun
Clinton
Eaton
Genesee
Huron
Ionia
Isabella
Jackson
Kent
Lapeer
Lenawee
Montcalm
St. Clair
Sanilac
Shiawassee
Tuscola
Washtenaw

Minnesota

All counties except:

Aitkin	Koochiching
Carlton	Lake
Cook	Ramsey
Itasca	St. Louis

Montana

Hill	Richland
Judith Basin	Roosevelt
Phillips	Valley

Nebraska

Antelope	
Boone	Holt
Boyd	Knox
Burt	Madison
Butler	Pierce
Cedar	Platte
Colfax	Saunders
Cuming	Sheridan
Dakota	Stanton
Dawes	Thuston
Dixon	Washington
Gage	Wayne

New York

Allegany	Oneida
Cattaraugus	Onondaga
Cayuga	Ontario
Erie	Orleans
Genesee	Otsego
Herkimer	Seneca
Jefferson	Steuben
Livingston	Tompkins
Madison	Wayne
Monroe	Wyoming
Montgomery	Yates
Niagara	

North Carolina

Rowan

North Dakota

(All counties)

Ohio

Allen	Lorain
Ashland	Mahoning
Ashtabula	Medina
Auglaize	Mercer
Carroll	Paulding
Columbiana	Portage
Coshocton	Putnam
Crawford	Richland
Drake	Seneca
Defiance	Shelby
Hardin	Stark
Homes	Trumbull
Huron	Van Wert
Knox	Wayne
Logan	Wood

Oregon

Klamath	Polk
Marion	Yamhill

Pennsylvania

Armstrong	Clarion
Bedford	Columbia
Berks	Crawford
Bradford	Cumberland
Bulter	Dauphin
Cambria	Erie
Centre	Franklin
Chester	Indiana
Juniata	Schuylkill
Lawrence	Snyder
Lebanon	Somerset
Lehigh	Tioga
Lycoming	Union
Mercer	Washington
Northumberland	Westmoreland
Perry	York

South Carolina

Sumter

South Dakota

All counties except:

Custer	
Fall River	Shannon
Jones	Washabaugh
	Washington

Texas

Archer	Hamilton
Bell	Hill
Bexar	Hunt
Bosque	Johnson
Brown	Kaufman
Coleman	Lamar
Collin	Limestone
Concho	McCulloch
Cooke	McLennan
Coryell	Medina
Dallas	Runnels
Denton	San Saba
Erath	Tarrant
Falls	Taylor
Gillespie	Uvalde

Washington

Spokane	Stevens

Wisconsin

All counties except:

Ashland	Menominee
Bayfield	Milwaukee
Douglas	Oneida
Florence	Price
Forest	Sawyer
Iron	Vilas
Lincoln	

Wyoming

Cook

Done in Washington, D.C., on February 13, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 5, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-8371 Filed 3-27-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1150

Dairy Promotion Program; Decision Establishing Final Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final decision establishes a Dairy Research and Promotion Order to implement a national program for dairy product promotion, research and nutrition education as provided for in Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983. The program will be funded by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States and will be administered by a board of 36 dairy farmers appointed by the Secretary.

The order defines the powers and duties of the National Dairy Promotion and Research Board, provides for collection of the 15-cent per hundredweight assessment, specifies the objective of board activities, and provides a mechanism for terminating the activities of the board if the program is defeated in any producer referendum. Additional subparts set forth the rules to govern petitions to modify or to be exempted from the order and the procedures used to certify those milk producer organizations eligible to submit nominations for board membership to the Secretary.

EFFECTIVE DATES: All provisions, except the collection of assessments specified in § 1150.152, are effective on and after April 1, 1984. The collection of assessments in effective on and after May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to submit proposals: Issued December 6, 1983; published, December 9, 1983 (48 FR 55132).

Procedure for certification of milk producer organizations: Issued January 27, 1984; published, February 2, 1984 (49 FR 4068).

Invitation to submit comments and notice of public meeting: Issued January 27, 1984; published February 2, 1984 (49 FR 4080).

This final rule has been reviewed under Executive Order 12291 and has been designated as a "major" rule since it would have an annual impact on the economy of more than $100 million. Also, this action could have a significant economic impact on a substantial number of small entities. Consequently, a combined regulatory impact analysis and regulatory flexibility analysis has been prepared and is available for review to the public by contacting the person named above.

In information collection requirements that are included in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35) and have been assigned OMB Control Number 0581-0147.

Statutory Authority for Final Rule

This final rule is issued pursuant to Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128 as approved November 29 1983. The declared policy of this statute is to provide for the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

The statue mandates a deduction of 15-cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers in the 48 contiguous States. These deductions are to be remitted to a National Dairy Promotion and Research Board established for administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purpose. Where it can be established that milk producers are participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally, such producers shall receive credit in determining the assessment due from such producers for contributing to such programs of up to 10 cents per hundredweight of milk marketed.

In addition, the statute mandates that the Secretary issue a promotion order to become effective not later than 90 days after publishing a proposed order for public comment, which occurred February 2, 1984. Also, within the 60-day period immediately preceding September 30, 1985, the Secretary must conduct a referendum among producers for the purpose of ascertaining whether the promotion order shall be continued.

Preliminary Statement

Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98-180), which was enacted on November 29, 1983, authorizes the establishment of a national program for dairy product promotion, research and nutrition education to be funded by a mandatory assessment on all milk marketed by producers in the 48 contiguous States. The Act also specifies the timetable for implementation of an order to establish the program. The Secretary was required to publish a proposed order within 30 days after it was received and provide an opportunity for public comment. After notice and opportunity for public comment, the Secretary must issue a dairy products promotion and research order to become effective not later than 90 days following publication of the proposal.

To implement this procedure, the Department solicited proposals from interested parties. This invitation to submit proposals was issued on December 6, 1983, and published in the **Federal Register** on December 9, 1983 (48 FR 55132). Interested parties were given until January 6, 1984, to submit proposals.

In response to this notice, one complete proposed order was received. In addition, other more limited proposals concerning certain aspects of the program were received that raised issues and questions concerning the order and its application. The proposed order along with the issues and questions were published in the **Federal Register** on February 2, 1984 (49 FR 4080). Interested parties were asked to submit comments on the proposed order by February 24, 1984. In addition, the Department conducted a public meeting in Alexandria, Virginia, on February 14 and 15, 1984, to give interested parties an opportunity to discuss all issues raised by the proposed order. The record of this public meeting and all comments received from interested parties were utilized in the development of these final rules.

In addition to the proposed order, other rules were necessary to implement the program on the timely basis required by the enabling legislation. The Act requires that the eligibility of any organization to nominate milk producers to serve on the Board must be certified by the Secretary. Interim rules were necessary to implement the application and certification process with respect to the eligibility of organizations to nominate Board members. It was found that because of a statutory deadline, it was impracticable, unnecessary and contrary to the public interest to give preliminary notice and opportunity for public comment prior to issuance of the rules and good cause was also found for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

The emergency interim final rule provided the procedure for organizations to apply for certification by the Secretary of their eligibility to represent milk producers and to nominate milk producers to serve as members of the National Dairy Promotion and Research Board. Any organization whose membership consisted primarily of milk producers was invited to apply for certification.

In order to be eligible for certification to make nominations to the initial Board, applications for certification were to be received by the Department by March 5, 1984.

Additional rules concerning the procedure for conducting referenda to determine producer approval will be developed at a later time since the initial referendum is not required by the Act until the 60-day period immediately preceding September 30, 1985.

As previously stated, the Dairy and Tobacco Adjustment Act of 1983 mandates the implementation of a national dairy promotion plan. In addition, the legislation specifies many of the provisions to be included in the dairy promotion and research order. The major issues raised in comments and at the public meeting concerned matters of statutory interpretation or operations not addressed by the Act. Most of the comments addressed one or more of the issues set forth in the proposed order document: nature of authorized advertising, Board membership, qualification of State and regional programs, collection of assessments, and expenditures of funds. Consequently, each of these issues will be addressed in the decision which follows.

The decision is divided into seven major issues. The first six deal with the dairy research and promotion order and the seventh with the additional regulatory provisions to implement the program. The major issues identified in this proceeding are:

1. Nature of authorized advertising.
2. Definitions and miscellaneous provisions.
3. Structure of the Board.
4. Powers and duties of the Board.
5. Expenses and collection of assessments.
6. Qualification of State and regional programs.
7. Additional regulatory provisions.

Findings and Conclusions

Following are the findings and conclusions on the major issues set forth above.

1. Nature of Authorized Advertising

The order should not specifically prohibit the expenditure of program funds to promote milk and dairy products on a brand or trade name basis. The initial decision on brand or trade name advertising should be left to the National Dairy Promotion and Research Board, which has the responsibility to administer the order and to conduct a coordinated national program for milk and dairy product promotion, research and nutrition education. The Board should have the authority to consider, and to recommend to the Secretary, possible methods and plans or projects for implementing a promotion program for milk and dairy products on a brand or trade name basis. The Board would have to determine that any such program would tend to generally increase the consumption of milk and dairy products and that such program could be carried out in an equitable manner and without using unfair or deceptive practices. As discussed later, this issue also involves the criteria and procedure for determining if State or regional dairy product promotion programs that provide for brand advertising should be qualified so that producers who fund such programs would be eligible for credits, thereby reducing the amount of their mandatory assessment to fund the national program.

This issue stimulated substantial controversy and was addressed by a large number of interested parties both at the public meeting and in written comments to the Department. Generally, producers propose a generic promotion program with an absolute prohibition against brand name advertising in the order. On the other hand, processors, generally proprietary firms, oppose any prohibition in the order to exclude advertising that makes reference to private brands or trade names and propose that such advertising be specifically provided for in the order.

The Milk Industry Foundation and International Association of Ice Cream Manufacturers (MIF) and other interested parties contend that the expenditure of program funds on brand advertising cannot be prohibited in the order since the Act does not prohibit brand advertising. They contend that both the statutory provisions and the legislative history of the Act make it unlawful for the Secretary to arbitrarily exclude brand advertising in the order and thereby prohibit the Board from determining whether any specific advertising program would tend to achieve the purposes of the Act. These parties also maintain that brand advertising, rather than being directed towards brand preference, can be effective in increasing total sales of milk and dairy products. They further maintain that brand advertising, in conjunction with a generic program, would encourage processor involvement in promoting dairy products. They maintain that, although generic programs have been successful, they could have been more successful if they had been fully coordinated with the marketing plans and strategies of processors. In this regard, brand advertising advocates offered various general guidelines to implement a jointly funded promotional program. Basically, the concept involves matching processor dollars for promotional programs with dairy farmer funds from the national program. Processors maintained that their contributions would be either in excess of what is currently spent by processors for promotion, or in excess of some prior established norm of advertising expenditures for various categories of milk and dairy products. Thus, they maintain that an incentive would be created for the expenditure of additional funds to promote milk and dairy products, and that such a jointly funded program would be most effective in increasing overall sales. Thus, processors conclude that a jointly funded program would have the greatest impact in carrying out the objectives of the Act to finance and carry out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace.

The National Milk Producers Federation (NMPF) and other interested parties (including producers, processors and representatives of State and regional promotion programs) oppose the expenditure of program funds to promote milk and dairy products on a brand or trade name basis. They maintain that brand advertising results in sales shifts among brands and does not result in an overall increase in sales. Therefore, they maintain that the funding of brand advertising programs would not be consistent with the objective of the Act to increase the overall sales of milk and dairy products. Producer groups further emphasize that the Act requires that the program be funded by producer contributions, and that producers do not want their funds to be used by processors to promote their own private brands of milk and dairy products. These parties also maintain that it would be impossible to administer any brand advertising program in an equitable manner under the national program. They question how the Board would determine what processors and what brands would receive producer funds for promotion. They maintain that excluded processors would be placed at a competitive disadvantage and that the Board would be subject to extensive litigation by such companies. Producers also maintain that attempting to allocate program funds among all processors and thousands of brands would result in a dissipation of producer contributions to subsidize the advertising of processors. With respect to the concept of processors matching new advertising dollars with producer funds, producers question what procedure would be used to determine what processors would have spent for advertising in the absence of producer contributions. Producers maintain that if the Board has to contend with all the administrative problems inherent in a national program that provides for brand advertising, rapid implementation of an effective dairy product promotion program would be impossible. Producers contend that Congress intended that an effective program to increase consumption of milk and dairy products be implemented expeditiously as evidenced by the specific and limited time span contained in the Act for adoption of a program. Producers also maintain that rapid implementation is necessary to have an ongoing, effective program prior to the initial, required referendum. Producers conclude that the function of the national program is to use producer funds to increase the overall consumption of milk and dairy products through a generic promotion program and that such a program is consistent with the intent and requirements of the Act.

A review of the points raised by the proponents and opponents of brand advertising reveals four significant points. First of all, the Act is silent with respect to the use of program funds to promote milk and dairy products on a brand or trade name basis. Second, the program is funded by producers through a mandatory assessment on all milk marketed and, from the views and comments submitted by producers and their cooperative associations, they do not want to fund a program that promotes milk and dairy products on a brand or trade name basis. Third, there are difficult administrative, enforcement, and legal problems inherent with the implementation of brand or trade name advertising under a national promotion program that cannot readily be resolved. Fourth, the intent of the enabling legislation must be construed to promote an overall increase in sales of milk and dairy products when viewed in the context of the entire Dairy and Tobacco Adjustment Act that is principally concerned with curtailing the high surplus of milk production and dairy products.

The first of the above points is controlling and, thus, the order should not contain an outright prohibition to the use of national program funds to promote milk and dairy products on a brand or trade name basis. To do so would prohibit the Board from even considering promotional programs that use brand or trade names that might be developed in the future and be beneficial to the entire industry. In effect, the Board will not be foreclosed from considering all options, which appears to be the primary concern of processors at this time.

The remaining three major points were raised by producers in opposition to brand or trade name advertising. At the present time, producers do not wish to fund a brand advertising program because they do not believe that this would result in an overall increase in sales of milk and dairy products. In this regard, nothing has been presented to the Department through all the views and comments received from which it could be concluded that brand advertising has a positive impact on total sales of milk and dairy products. Accordingly, there should be nothing in the order that would require the Board to expend program funds for a brand name advertising program. In fact, it should be the Board's option not to even consider such programs at the national level. If in the future, however, the Board wishes to consider brand advertising programs, it should be able to do so.

The initial decision with respect to this issue should rest with the Board as it is responsible for conducting a coordinated national program for dairy product promotion. As provided in the order, the Board will have the authority to consider, and to recommed to the Secretary, possible methods and plans or projects for implementing promotion programs for milk and dairy products on a brand or trade name basis. Before implementing such a program, the Board would have to determine, and establish to the Secretary, that any such program would tend to generally increase the total sales of milk and dairy products and that such program could be administered and carried out in an equitable manner and without using unfair or deceptive practices.

As stated previously, this issue also involves the procedure and criteria to be used in determining whether State and regional programs should be qualified for credit purposes under the national program. The Act specifies that producers can obtain a credit for funding qualified programs, thereby reducing the amount of their mandatory contribution that is to accrue to the national program. Consequently, a determination must be made with respect to whether State and regional programs that expend funds for promoting milk and dairy products on a brand or trade name basis will be qualified for credit purposes. The order contained herein provides that the Board must address the issue of whether such programs should be qualified. Until such time as the Board, and ultimately the Secretary, approves such a program, any State or regional program that promotes milk and dairy products on a brand or trade name basis will not be qualified, and producers funding such programs will not be credited for their contributions to such programs.

Generally, the parties that support brand advertising under the national program also support qualification of State and regional programs that fund brand advertising programs. They maintain that it is not the intent of the Act to disrupt active and ongoing State and regional promotional programs or to require that such programs conform to the same type of activities that may be conducted under the national program. They emphasize that the Act requires that nothing in the Act "may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State."

Parties that opposed brand advertising under the national program generally opposed the qualification of State or regional programs that provide for brand advertising for virtually the same reasons presented in the discussion of the nature of authorized advertising under the national program. Basically, producers perceive the crediting of brand advertising under local programs as a dissipation of national program funds to subsidize the advertising of processors for their own benefit and for the benefit of their producer suppliers.

It is clear that the Act does not require, for qualification purposes, that State and regional programs conduct activities that are identical to those that may be conducted under the national program. However, it is evident that brand advertising conducted at the State or regional level would represent a significant departure from the generic promotion program that NMPF urged under the national program because of the numerous problems inherent in the administration and enforcement of brand or trade name advertising under the national program. Also, such problems associated with brand or trade name advertising that were discussed relative to the national program apply equally as well to State and regional programs. Consequently, a determination must be made on whether State or regional programs should be qualified if brand advertising is conducted.

The order contained herein provides the Secretary with the authority to determine which State and regional programs should be qualified for credit purposes. The qualification procedure and the criteria to be used are discussed under issue number 6. However, with respect to the brand advertising issue, the Board must be given the duty to review such programs and recommend to the Secretary whether they should be qualified for credit purposes. The Board has been given the authority to conduct a coordinated national program, and therefore should be given the opportunity to have an input with respect to the qualification of programs that conduct brand advertising. Generally, the requirements that the Board would need to consider to implement a national advertising program would serve as a benchmark in its deliberations on the qualification of State and regional programs.

The discussion of the nature of advertising under the national program indicated that the Board would have the option to determine when and if brand advertising should be considered. However, there is a greater sense of urgency with respect to the issue at the State and regional level. This is because the order is to be fully operational on May 1, 1984, and because assessments on May production will be due on June 30. Consequently, those responsible for remitting the assessments to the Board will have to know which programs are qualified for credit purposes. Because of the urgency involved, the order provides that, until such time as the Board reviews and makes a recommendation on the issue, any State or regional programs that expend funds to promote milk and dairy products on a brand or trade name basis will not be qualified programs.

From the information contained in views and comments received by the

Department, it appears that promotional programs operated under State or Federal laws do not engage in promoting milk and dairy products on a brand or trade name basis. Consequently, most, if not all, of such programs would be qualified programs. Other regional programs, however, that are operated by processors do emphasize their own particular brands or trade names. Such programs will not be qualified until such time as the Board recommends and the Secretary concurs that they should be qualified. Such a determination on the record is consistant with the record at this point in time. There is no demonstration to substantiate that such programs have a positive impact in increasing total sales of milk and dairy products.

2. Definitions and Miscellaneous Provisions

The order includes definitions of nineteen terms. These definitions are helpful tools in regulatory construction and make the order language simplier and easier to understand. Twelve of these terms are defined in the Act. Of the twelve, eight (department, milk, person, dairy products, fluid milk products, producer, research, and nutrition education) are reproduced verbatim from the Act. Proponents of the order recommended that the definitions of dairy products, research and nutrition education differ slightly from the way they appear in the Act. Proponents asserted that these minor changes would clarify what was interpreted as ambiguous statutory language.

Several interested parties objected to the proposed definition of "dairy products." They contended that the proposal to tie "dairy products" to the published standards of identity would unnecessarily restrict the range of products that could be promoted by the Board. One party stated that the proposed definition conflicted with the Board's statutory duty to study casein because casein is not defined in the standards of identity. It is concluded that the definition of "dairy products" should be identical to the definition included in the Act. This definition eliminates any possible regulatory conflicts and gives the Board flexibility to develop programs to promote a wide range of products.

Likewise, the definitions of research and nutrition education are reproduced from the Act. This approach avoids any possibility that the order would be interpreted to place a different meaning on these terms than is intended in the Act.

Four terms are given definitions that are slightly different from the way they appear in the Act. The definitions of "Board" and "United States" are changed by replacing the statutory citations with order citations and the title of the Board is added. The term "Secretary" is broadened to include officers and employees of the Department delegated to act for the Secretary. The definition of "promotion" is changed by adding the word "generally." The change is designed to emphasize that promotion efforts of the Board should be directed toward increasing overall demand for dairy products. These minor alterations were suggested by the producer proponents and no interested parties objected.

Seven terms are defined in the order that do not appear as definitions in the statute: Act, fiscal period, eligible organization, qualified State or regional program, plans and projects, marketing, and cooperative association. These definitions were offered to simplify drafting of the regulatory language. With minor editorial changes, they are adopted as proposed. No parties commented on these definitions.

The final order also contains certain miscellaneous provisions concerning penalties, proceeding after termination, personal liability of Board members and employees, patents and copyrights, amendments, separability, and compliance with the Paperwork Reduction Act. These provisions are necessary because they restate specific statutory requirements and they provide completeness for ease of administration. Other than the provision for penalties and compliance with the Paperwork Reduction Act, they were submitted by the proponents and no interested parties opposed their adoption.

The penalty provision of section 119(b) of the Act is included in § 1150.156 of the order. Although the statute allows these penalties to be imposed on persons who violate the order even if the provisions are not included in the order, including the penalty provision in the order will serve to give all parties additional notice of the consequences of willful violations of the order.

Sections 1150.181 and 1150.182 provide a mechanism for concluding the business of the Board if the program is defeated in a producer referendum. Since continuation of the program is subject to producer approval, the order should contain a method for closing out the program in an orderly fashion. These provisions were proposed by the producer proponents and no interested parties opposed their adoption. Therefore, they are adopted as proposed, with minor editorial changes.

Section 1150.183 is designed to limit the personal liability of Board members and Board employees for actions taken in their official capacities. This protection from liability would not extend to acts of dishonesty or willful misconduct. This provision was proposed by the National Milk Producers Federation. No additional comments were received on this topic. This provision is included in the order to clarify the personal and official responsibilities of Board members and employees.

The order contains a provision to protect the interests of the Board and the U.S. Government in patents, trademarks and copyrights that result from plans or projects funded by the Board. The language adopted in § 1150.184 was proposed by NMPF. Kraft, Inc., requested that the language be clarified to emphasize that patents and copyrights that relate to a company's branded products that may result from jointly-funded programs remain the property of the company. It is not necessary to address the issue raised by Kraft at this time. The protection of private brand or trade names and any associated patents or copyrights should be addressed in any joint program agreements that are entered into by the Board and private industry. The order need only assert the Board's property interest in materials developed with its funds. Therefore § 1150.184 is adopted as proposed.

Section 1150.186 states that if any part of the order is declared invalid, the remaining provisions shall not be affected. This provision is necessary to allow the program to operate until any legal questions are resolved or changes can be implemented to correct legal deficiencies. No interested party other than the proponent commented on this provision. Since the provision is necessary to effectuate operations of the program, it is adopted as proposed.

Sections 1150.185 and 1150.187 address legal requirements for implementing the order or amendments to the order. The Act gives the Secretary authority to amend the order. Since the Act is silent with regard to procedures to amend the order, it is concluded that any amendments must be promulgated under the informal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Amendments can be proposed by the Board, the Secretary, eligible organizations, cooperatives, or any interested party. Proposed amendments would be subject to the notice and comment provisions of the Administrative Procedure Act. The Secretary would have the authority to issue interim final rules in emergency situations. Also, regulations issued under the Act are subject to the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Sections 1150.185 and 1150.187 are included so that the order complies with these statutory requirements.

3. Structure of the Board

The Act states that the program will be administered by a Board of not less than 36 milk producers appointed by the Secretary. Interested parties raised several issues concerning the structure of this producer Board, including geographic representation, nominations, and conflicts of interest. This part of the decision sets forth the order provisions that establish the Board and its operational procedures and discusses the concerns raised by interested parties.

Section 1150.131 establishes the National Dairy Promotion and Research Board of 36 milk producers. The Act requires that Board members be nominated to represent specific geographic regions and that each member represent an equal proportion of total U.S. milk production. The NMPF proposal adopted in this decision divides the nation into 13 geographical regions. Each region is assigned between one and six Board positions, depending on the volume of milk production. Analysis of this proposal shows that each Board member, in fact, represents approximately one thirty-sixth of the nation's milk supply, which complies with the statutory requirement.

A representative of Farmers Union Milk Marketing Cooperative objected to the variable number of Board members from each region. He suggested that the regions be drawn so that they represent equal amounts of the nation's milk production. Essentially, he proposed that the order provide for six regions, each having six Board positions. In written comments, he withdrew the proposal for alternative regions with regard to Board membership. Farmers Union did submit an alternative proposal concerning membership of the Board's executive committee. This proposal is discussed in the section of this decision on Powers and Duties of the Board.

Other interested parties suggested that Board positions be reserved for consumers, handlers, and other nonmilk producer groups. The Act requires all Board members to be milk producers. Therefore, these suggestions cannot be considered.

The NMPF proposal for a 36-member Board of milk producers representing 13 geographic regions meets the statutory requirements. Since there were no other proposals regarding Board membership that comply with the Act, the NMPF proposal is adopted.

NMPF also proposed that every three to five years, the Board be required to reapportion the Board positions to reflect regional changes in milk production. This provision would assure that the Board would continue to represent milk production across the country. Since this provision is certainly within the spirit of the Act and no opposition comments were received, it is adopted with minor editorial changes.

The Act states that Board members shall serve terms of three years and that no member may serve more than two consecutive terms. Also, the Act states that the initial appointments will be divided proportionately into one-, two-, and three-year terms. Section 1150.132 restates these requirements with some minor clarification. For simplicity, the order states that all terms will expire on April 30 of the designated year, so that all terms will begin on the anniversary of the date when the order became fully effective, May 1, 1984. Also, the order allows a retiring Board member to remain in office until his/her successor is appointed. These minor changes are added for ease of administration. In addition, it is appropriate and consistent with the Act for the Secretary to designate the one-, two-, and three-year terms for the initial Board. These abbreviated terms of service will count as a full term for purposes of the two-term limit.

The Act states that Board members shall be appointed from nominations submitted by eligible organizations. Eligible organizations are organizations that represent dairy farmers as outlined in § 114 of the Act and in §§ 1150.270 through 1150.278 of this Part. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, any eligible organization, then the Secretary may select Board members from nominations made by such producers in the manner authorized by the Secretary.

The proposal made by NMPF essentially repeated the statutory language. The proposal also included a paragraph that would allow eligible organizations for any region to caucus and select a single nominee for each position. In addition, the proposal did not include a mechanism for obtaining nominations from producers not represented by the eligible organizations. Although these proposals do not directly contradict the statute, they would restrict the number of nominees from which the Secretary would select Board members.

The Act gives the Secretary authority to appoint the Board. The Department contends that any regulatory language that tends to restrict the number of nominees to less than two for each Board position contradicts the statutory authority granted to the Secretary. Consequently, the paragraph of § 1150.133 dealing with caucuses of eligible organizations is amended to encourage caucus participants to nominate more than one individual for each position. Also, language is added to allow the Secretary to solicit nominations from milk producers through general farmer organizations or by other means when the Secretary determines that a substantial number of producers are not represented by the eligible organizations. These changes are designed to preserve the Secretary's authority to appoint Board members from a broad list of nominees.

The NMPF proposal also included a provision to have the Department announce anticipated vacancies and require that nominations be submitted to the Secretary sixty days before the anticipated vacancy. No interested parties commented on this provision. This provision is consistent with the Act and is adopted with one change which specifies that the Department should announce vacancies at least 120 days prior to the expiration of terms.

The order should contain a procedure for filling unexpected vacancies. The procedure proposed by NMPF in § 1150.136 of the proposed order would have required the Secretary to select a replacement Board member from a restricted list of previous nominees. For the same reasons given earlier, the authority granted the Secretary to appoint the Board implies a certain flexibility to choose individuals without being restricted to a single nominee. Therefore, the final order contains less restrictive language in § 1150.136.

The order should provide some guidance on potential conflicts of interest of Board members. This issue was raised in the proposed order document and in the oral and written comments. Most interested parties did not believe that conflicts of interest would be a major problem. There was little support from interested parties for a rule which would prohibit a Board member from serving on the board of another dairy promotion organization while serving on the national Board. In fact, several persons suggested that such dual board membership be encouraged to aid in the coordination of efforts between the national Board and State and regional programs.

Since qualified State and regional programs benefit from this program through the workings of the credit system for producer participation and some of these programs might receive some direct funding from the Board, dual board memberships do raise a possibility of potential conflicts of interest. Without some limit on dual board membership activity, the Board would be open to criticism from the media, interested dairy organizations, and the general public.

Conflict of interest problems can be avoided if members of the Board disclose all relationships they may have with other dairy promotion organizations or an organization that has any relationship with the Board. In addition to disclosure, it is necessary for any member of the Board to abstain from any Board discussion or voting on a matter that involves an organization with whom the Board member has an ongoing relationship. The combination of disclosure and disqualification on matters that may give an appearance of a conflict of interest would diffuse the problem. Consequently, § 1150.134 contains a requirement that nominees agree to the practice of disclosure and disqualification as a condition of appointment.

The proposed § 1150.135 dealing with acceptance of Board positions has been integrated into the nomination process along with the rule on conflicts of interest discussed above. This editorial change simply provides that nominees must agree to serve at the time of nomination. This will speed the appointment process and avoid unnecessary delays.

Section 1150.137 outlines basic procedures for the conduct of Board meetings. The language has been changed from the proposal to clarify the basic rules. All Board members must be given notice of meetings. A majority of the members shall constitute a quorum at any meeting. Any action of the Board requires concurring votes from a majority of the members present. Business can be conducted with affirmative votes of a majority of the Board by mail, telephone or telegraph in emergency situations if all members are notified and given the opportunity to participate and the action is confirmed promptly in writing. Procedures to supplement these basic rules can be adopted by the Board.

Section 1150.138 restates the statutory provision that Board members serve without compensation. The members will be reimbursed for their necessary and reasonable expenses as approved by the Secretary. This provision was proposed by NMPF and no interested parties opposed its adoption.

4. Powers and Duties of the Board

The provisions of §§ 1150.139 and 1150.140 of the proposed order generally restated the powers and duties specified in section 113 of the Act. Most of the items covered in these sections generated few comments from interested parties and are adopted as proposed. The Board's major responsibility is to develop a program to promote the use of fluid milk and dairy products. The Board can undertake this responsibility itself or it can contract with other parties. In the end, the Board must develop a program along with related budgets and submit both to the Secretary for approval, and carry out those programs approved by the Secretary. The Board must provide the Secretary with notice of all of the meetings, an annual audit, and any other information the Secretary requests.

Also, the Board is given the power to administer the order and to make rules and regulations to effectuate that administration. The Board may disseminate information to dairy farmers and eligible organizations and must publish an annual report of its activities. The Board must require certain information of its contractors and the contractors must agree to make all books and records concerning the contract available for audit by the Board or the Secretary. The Board is directed to encourage coordination among all organizations that promote dairy products.

Three issues concerning powers and duties of the Board did generate comments from interested parties: composition of the executive committee, advisory committees, and Board staff. In addition, two paragraphs have been added to § 1150.140 for completeness.

Composition of the Board's executive committee was a significant issue at the public meeting and in written comments. The Act states that the Board shall appoint an executive committee whose membership "shall equally reflect each of the different regions in the United States in which milk is produced." NMPF proposed that the executive committee be made up of one member from each of the proposed 13 geographic regions used to determine Board membership. A representative of Farmers' Union Milk marketing Cooperative objected to this proposal because the executive committee members would not represent equal portions of the nation's milk production. The spokesman was concerned that the dairy industry of Wisconsin and the Upper Midwest would be underrepresented on the executive committee. Ten members of Congress submitted comments supporting the Farmers' Union position.

In written comments, Farmers' Union changed their position, proposing that the order not specify the size of the executive committee, but that the Board be given the discretion to appoint an executive committee that "shall equally reflect each of the different regions in the United States in which milk is produced, taking into account the geographic distribution of milk production volume." In addition, Farmers' Union recommended that the word "Area" be substituted for "region" to remove any structural parallel between this section and § 1150.131 dealing with Board membership.

The Act requires the Board to establish an executive committee. However, the size and composition of this committee are not specified because the term "region" is not defined by the Act. Since "region" is not defined with regard to Board membership or executive committee membership, the executive committee structure proposed by NMPF is not required by the Act. Consequently, the final order in § 1150.140(b) requires the Board to establish an executive committee whose membership in the words of the Act "shall equally reflect each of the different regions in the United States in which milk is produced." This language gives the Board flexibility to establish an executive committee of any size that is found to be workable and meets the criteria established by the Act.

NMPF proposed that the Board be given authority to establish advisory committees and to pay the reasonable expenses and fees of the members of such committees. MIF and other industry representatives proposed that the order mandate two advisory committees of industry representatives (one of chief executive officers and one of marketing executives) to be appointed by the Secretary. Although the Act would seem to permit the establishment of advisory committees by the Board, there is no statutory support for the proposal to have members of such committees appointed by the Secretary. Therefore, the MIF proposal cannot be adopted. The order adopted by this decision gives the Board authority to appoint advisory committees and pay their associated costs as proposed by NMPF.

The Act speaks of employees of the Board and thus, by implication, gives the Board authority to hire a staff. The

NMPF proposal gives the Board the authority to appoint or employ such persons as it may deem necessary. One interested party commented on this proposal and suggested that the Board be required to hire a full-time executive director. The Act gives the authority to implement the national dairy promotion program to the Board. The Board should be granted as much flexibility as possible within statutory limits to develop and administer the program as it deems appropriate. The order should give the Board authority to hire a staff but should not dictate the structure of that staff. The Secretary will, however, retain general budgetary oversight over all Board operations.

The Act gives the Board power to receive, investigate and report to the Secretary complaints of violations. This language is repeated in § 1150.139(d) of the order. This provision gives the Board primary responsibility to initiate enforcement of the order.

In addition to the powers and duties already discussed, it is necessary to add two paragraphs to the duties section proposed by NMPF. The first, § 1150.140(f), restates the statutory requirement that the Board undertake studies dealing with use of fluid milk and dairy products by the military and the feasibility of converting surplus nonfat dry milk into casein. The other, § 1150.140(d), states that the Board have an affirmative duty to review all State and regional programs that promote milk and dairy products with brand name advertising and recommend to the Secretary whether these programs should be classified as qualified programs. The rationale for this provision was outlined in the discussion of branded advertising.

5. Expenses and Collection of Assessments

The order specifies that the Board is authorized to incur certain expenses that shall be paid from assessments. The provisions pertaining to expenses are adopted as proposed by NMPF. No views or comments were received to indicate any major dissatisfaction or problems with the proposed provisions.

As proposed, the Board is authorized to incur such expenses as the Secretary finds are reasonable for the Board to exercise its powers and perform its duties in accordance with the order. After the first full year of operation of the order, the Board's administrative expenses are not to exceed 5 percent of the projected revenue of that fiscal year. In addition, the order specifies that the Board must reimburse the Secretary for administrative costs incurred after the order has been promulgated by the Department. Such administrative costs incurred by the Department include the cost of conducting the required referendum, and any subsequent referendum that might be conducted, to determine whether producers approve the continuation of the order. In addition, the Department's administrative costs include the cost of the reports and studies that are required in section 301(4) of Title III of the Dairy and Tobacco Adjustment Act of 1983. Specifically, this includes the cost of the annual reports that the Secretary must submit to Congress not later than July 1, 1985, and July 1 of each year thereafter, which must include an independent analysis of the effectiveness of the Dairy Research and Promotion Order contained herein.

The assessment provisions represent a major operational section of the order and are contained in § 1150.152. The section, as originally proposed by NMPF, contained provisions to specify who is responsible for making payments to the Board, the rate of such payment, the manner by which producers may obtain credits for participation in another program, when payments must be made, charges on overdue accounts and authority for the Secretary to establish temporary rules to act in place of the Board during the initial implementation period prior to the appointment of the Board.

The order provisions in this section have been altered significantly from the provisions proposed by NMPF. These changes, however, are primarily structural changes to simplify and clarify the reading and meaning of the provisions. Certain provisions have been deleted and others have been placed on other sections. The major concepts of the NMPF proposal, however, are carried out in the revision of the section.

As required by the Act, all producers whose milk is produced in the United States are subject to a mandatory assessment to provide the funds necessary to carry out the order. The provisions specify that persons who pay producers must collect and remit an assessment to the Board, while producers who market milk of their own farm production must remit an assessment directly to the Board.

Several interested parties suggested alternatives that would require that all assessments be remitted to the Secretary rather than the Board, or that State promotion programs collect assessments from persons who pay producers and, in turn, pay the appropriate assessments to the Board. These alternatives are not adopted because the Act specifically states who shall collect the assessments and that these parties shall remit the assessments to the Board.

The provisions specify that the rate of assessment is 15 cents per hundredweight, but that a producer can obtain a credit of up to 10 cents per hundredweight for contributions to a qualified State or regional program. However, for milk produced during May 1984, the credit can be up to 15 cents per hundredweight under certain conditions. NMPF proposed that the maximum 15-cent credit apply through May 29, 1984, and this has been extended through the entire month. Such extension will simplify the process for persons who are responsible for remitting the assessment to the Board in that they will have to be concerned only with one rate for the entire month.

The provisions that specify the action that must be taken by producers in order to receive a credit for contributions to another program have been modified from those proposed by NMPF in order to simplify the credit process for both producers and handlers.

NMPF proposed that producers certify that they are participating in another program. Such language implied that producers would be required to file a form with the paying handler that identified the other program and the rate of contributions. This requirement would have applied to all producers who are not represented by a cooperative association that could make a certification on behalf of its members.

This process has been modified to specify that a producer who can establish participation in a qualified State or regional program shall receive a credit. A producer will be able to establish participation in a number of different ways. This would include an authorized deduction for participation in another program that is already in existence, a State law that requires a deduction by a handler to fund a qualified program, or a statement to the paying handler by a qualified program indicating that certain producers are participating in such program. Also, as in the NMPF proposal, a cooperative association could establish the participation of its members with paying handlers. It is anticipated that only those producers who make individual payments to a qualified program (other than through a payroll deduction) will have to file a certification with the paying handler. Forms will be provided for this purpose. Also, the qualified program will have to validate the producer's participation. Even in these instances, however, a producer will not have to individually establish participation in a qualified program if such program takes the initiative to inform the paying handler of the producer's participation. Persons who market milk and dairy products of their own farm production to consumers will have to establish participation in another program with the Board, and participation must be validated by the qualified program in order to receive credit for such participation. Overall, this process of establishing participation in qualified programs should reduce the paperwork burden for both producers and handlers as it incorporates within the credit process payment and funding processes that are already in place.

The NMPF proposed order contained provisions that required certain specific actions by qualified programs that provide for refunds. These included requiring the qualified program to send any requested refunds to the Board, to notify producers that their requested refunds were sent to the Board, and to send any requested refunds to other qualified programs if so designated by the producer. These provisions have been removed from this section of the order as the primary requirement for qualifying a program that provides for refunds is contained in the provisions concerning the qualification of State and regional programs. Basically, in order to be qualified, such programs must agree to send requested refunds to the Board at the time they would normally make the refund to the producer. Other conditions (such as sending a notice to producers or sending funds to other programs) have been deleted since they intrude into the operations of other programs. However, qualified State and regional programs will have the option to send requested refunds to other qualified programs if they desire to do so and are requested to take such action by the producer. Such option is contained in the provisions concerning the qualification of such programs.

As proposed by NMPF, the order provides that the Secretary can act in place of the Board during the initial implementation period of the order. However, this authority is interpreted to apply also in the event the Board has not adopted operating rules at the time that the initial assessments must be remitted under the provisions. In the event that the Secretary must act in place of the Board, an additional provision providing for adjustments of accounts has been established in another section of the order. The provisions apply to the Department and the Board and are necessary to handle overpayments and underpayments.

A provision of the NMPF proposal granting temporary authority for the Secretary to issue credits on behalf of the Board has been deleted. Neither the Secretary nor the Board issues credits. Credits are authorized by the order when the paying handler is determining the amount of money to remit to the Board (or initially to the Secretary), and are based, up to the maximum amount authorized by the order, on the basis of a producer's actual participation in a qualified program.

The order, as was proposed by NMPF, contains a provision that applies a charge on overdue accounts. No opposition was presented to such provision and it is necessary to provide a compliance incentive. In addition, the Act provides for specific penalties for noncompliance and these have been included in the order. Both of these provisions, however, have been deleted from the assessments section and are provided for in another section.

The issue of who has the responsibility to enforce the collection of assessments is not addressed within the assessment provisions of the order. However, a discussion of this issue is appropriate here.

The NMPF proposed that assessments and reports be submitted to the Board, but that no Board member or any other producer have access to confidential information. The proposal specified that the Board had the responsibility to report complaints of violations to the Secretary, but that books and records of handlers must be made available only to the Secretary. The implication of the proposal is that the Secretary would have the primary responsibility to enforce the collection of assessments. MIF further proposed that no confidential information of a handler be disclosed to Board members, agents, appointees or employees of the Board.

Contrary to the above proposals, the Board should have the initial responsibility or duty to enforce the collection of assessments. The Act specifies that assessments shall be remitted to the Board by persons who pay producers. In order to verify the assessments, reports must necessarily also be submitted to the Board. The Act also specifies that the Board is responsible for reporting complaints of violations. Since the Board must report violations and receive reports, the Board has the initial responsibility with respect to any violations of the order. Also, section 113(k) of the Act contemplates review of handler reports by employees of the Board because these employees are subject to the penalty provisions of the Act for disclosure of confidential information.

The order provides the Board with the authority to conduct a fully coordinated dairy promotion, research, and nutrition education program. For the program to be effective, and in view of the reasons presented above, the Board must have the authority for the initial enforcement of the order provisions. Consequently, the order provides that the Board has the responsibility to enforce the terms and provisions of the order, including the collection of assessments. The Board, however, would have the option to request the assistance of the Secretary to carry out this function since the Act gives the Secretary authority to initiate legal action to enforce the order. Furthermore, the order provides that a handler's books and records shall be made available to employees of the Board, as well as to the Secretary. Any person who willfully violates any provision of the order by refusing to provide needed information or by releasing confidential information is subject to the penalty provision of the Act. It is noted, however, that no Board member shall have access to such confidential information.

6. Qualified State and Regional Programs

Coordination between the national dairy promotion program and existing State and regional programs is given high priority by the Act. To facilitate coordination, the Act allows producers to subtract their contributions to qualified State or regional programs from the 15-cent per hundredweight assessment payable to the national program.This credit system, as previously discussed, allows existing programs to preserve their source of funds and help the national program carry out a coordinated dairy promotion effort.

In addition to the credit mechanism, the Act in section 121(a) states that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State. This statutory policy statement implies that the order should provide State and regional programs with as much freedom to continue their present operations as is consistent with a coordinated effort.

The Act does not provide any detailed definition of State and regional programs. It only states that for contributions to be eligible for credits, the program must be "active," "ongoing," and "qualified." The NMPF proposal gives the Secretary authority to determine qualification. The standards for qualification were (1) the program conduct promotion, research, and nutrition education activities as defined by the order, (2) be active and ongoing, (3) be financed by producers, (4) conduct a program over a major portion of a State or region, (5) not utilize private brand or trade names in advertising, and (6) for programs that allow refunds to producers, an assurance that the refunds would be sent to the national program or another qualified program. Only the prohibition on brand advertising drew significant opposition, although the requirement to be "active and ongoing" and the treatment of refunds generated discussion at the public meeting and in written comments.

The issue of brand advertising has been discussed previously in this decision. It has been determined that authority to qualify State and regional programs will rest with the Secretary, but the Board will be designated to review all programs that conduct brand advertising to determine if they tend to increase the overall demand for milk and dairy products. The Board will send a recommendation on each program to the Secretary who will make the final decision. This procedure will allow the Board to develop a uniform approach to the issue of brand advertising.

NMPF proposed that qualification be granted only to programs that operated in a major portion of a State or region. The Department received opposition comments from producer funded programs that operate in major metropolitan areas that do not provide services over a large geographic area. These programs asserted that they make a significant contribution to dairy promotion and should not be denied qualification because they operate within a small geographic area. The Department does not interpret the statute to mean that these programs should be denied qualification. In addition, the language submitted by NMPF was vague and would be difficult to administer. Therefore, this requirement was deleted from the final order.

Several State and regional programs that are funded by deduction from producer payrolls allow producers to request and receive a refund of their contributions. All programs operated under Federal milk orders provide for refunds as do some State sponsored programs. Coordinating these "voluntary" programs with the mandatory national program is a difficult task. The order must provide a mechanism that assures that every producer will contribute at least 15 cents per hundredweight to promote dairy products without preempting the operation of existing voluntary programs. As outlined in the discussion of collection of assessments, the simplest and most direct way of accomplishing this goal is to require that all voluntary programs that petition to be qualified so their producer contributors can receive the credit, agree to forward producer refunds (up to 10 cents per hundredweight) to the National Board or at the option of the program and producers, to another qualified program. Although this procedure does preempt some State laws with regard to refunds, this is the only approach that assures that all producers contribute 15 cents per hundredweight to promotion efforts without forcing producers to contribute 15 cents directly to the national program while continuing to fund State or regional programs or denying qualified status to such voluntary programs. Both of the alternatives would be inconsistent with the policy directive to encourage a coordinated promotion effort.

NMPF originally proposed that programs must have been active and ongoing on the date of enactment of the Act to be eligible for qualification. At the public meeting, the proponent amended the proposal to exempt from this provision programs operated under State or Federal law. This exemption was proposed so that the order would not conflict with section 121(a) of the Act dealing with preemption of programs organized under State or Federal law. Four members of the United States Senate submitted comments stating that the intent of the statute was to accommodate programs active at the time of enactment but not programs initiated after that date.

The Department agrees with the interpretation of the statute put forward by NMPF. The Act was designed to accommodate only existing State or regional programs. However, section 121(a) dealing with preemption must be weighed against the other statutory language. The NMPF proposal is a reasonable compromise of these conflicting parts of the Act.

As stated previously, this order attempts to apply the same standards to State and regional programs as are applied to the national program. The Act in section 113(j) prohibits the Board from using any funds to influence governmental policy or action. To provide consistency among all programs, this prohibition should be applied to State and regional programs. This requirement is included as § 1150.153(b)(6).

7. Additional Regulatory Provisions

In addition to the order provisions discussed in the first six sections of this decision, certain additional regulations are necessary to implement the national dairy promotion program. These are the procedure for certification of milk producer organizations and the rules of practice governing proceedings on petitions to modify or to be exempted from the order.

The rules of practice governing proceedings on petitions to modify or to be exempted from the order appear in §§ 1150.250 through 1150.252. They were included as a Departmental proposal in the proposed order and notice of public meeting document. No interested party submitted comments on these proposed procedures. Therefore, they are adopted as proposed.

The rules for certification of milk producer organizations appear as §§ 1150.270 through 1150.278. Previously, they were published as an emergency interim final rule. This emergency treatment was necessary because of the implementation deadline imposed by the Act. Interested parties were given an opportunity to comment on the interim rule. No comments were received. The rationale for these rules which were published in the emergency interim final rule document (49 FR 4068) is adopted by this decision. The interim rules are annexed to this order and made final.

Additional Findings

It is hereby found and determined that because of a statutory deadline, it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of these rules for 30 days after their publication in the **Federal Register.** In order to carry out the statutory timetable for implementation of the order, it is necessary that all of the provisions contained in this Part 1150 be effective on April 1, 1984, except that the provisions in § 1150.152 shall be effective on May 1, 1984.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion and advertising, Research.

Title 7 of the Code of Federal Regulations, Chapter X is amended by adding to Part 1150 "Subpart—Dairy Research and Promotion Order" and "Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From an Order" and revising "Subpart—Procedure for Certification of Milk Producer Organizations" to read as follows:

PART 1150—DAIRY PROMOTION PROGRAM

Subpart—Dairy Research and Promotion Order

Authority: Pub. L. 98–180, 97 Stat. 1128.

Subpart—Dairy Research and Promotion Order

Definitions

§ 1150.101 Act.

"Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1150.102 Department.

"Department" means the United States Department of Agriculture.

§ 1150.103 Secretary.

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

§ 1150.104 Board.

"Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131.

§ 1150.105 Person.

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

§ 1150.106 United States.

"United States" means the 48 contiguous States in the continental United States.

§ 1150.107 Fiscal period.

"Fiscal period" means the calendar year or such other annual period as the Board may determine.

§ 1150.108 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to §§ 1150.270 through 1150.278 of this Part.

§ 1150.109 Qualified State or regional program.

"Qualified State or regional program" means any State or regional dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to § 1150.153.

§ 1150.110 Producer.

"Producer" means any person engaged in the production of milk for commercial use.

§ 1150.111 Milk.

"Milk" means any class of cow's milk produced in the United States.

§ 1150.112 Dairy products.

"Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.

§ 1150.113 Fluid milk products.

"Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.114 Promotion.

"Promotion" means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§ 1150.115 Research.

"Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§ 1150.116 Nutrition education.

"Nutrition education" means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

§ 1150.117 Plans and projects.

"Plans and projects" means promotion, research and nutrition education plans, studies or projects pursuant to §§ 1150.139, 1150.140 and 1150.161.

§ 1150.118 Marketing.

"Marketing" means the sale or other disposition in commerce of dairy products.

§ 1150.119 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

National Dairy Promotion and Research Board

§ 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board of thirty-six members. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Four members from region number two comprised of the following State: California.

(3) Two members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Two members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

(5) Four members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(6) Six members from region number six comprised of the following State: Wisconsin.

(7) Three members from region number seven comprised of the following States: Illinois, Iowa, Missouri and Nebraska.

(8) Two members from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) Two members from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

(11) Three members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Three members from region number twelve comprised of the following State: New York.

(13) One member from region number thirteen comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(b) The Board shall be composed of milk producers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 11150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(c) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(d) The number of members for each region which shall serve on the Board shall be determined by dividing the total pounds of milk produced in the United States for the calendar year previous to the date of review by 36 which provides a factor of pounds of milk per member, and then dividing the total pounds of milk for each region by such factor.

(e) In determining the volume of milk produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 1150.171 and data published by the Department.

§ 1150.132 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.

(b) Each member of the Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

(c) No member shall serve more than two consecutive terms.

§ 1150.133 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) Upon effectuation of this provision, the Secretary shall solicit nominations for the initial Board from all eligible organizations. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

(b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in § 1150.133(a). Nominations for such position should be submitted to the Secretary not less than 60 days prior to the expiration of such term.

(c) An eligible organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific region, they may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

§ 1150.134 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

§ 1150.135 Appointment.

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1150.131(a).

§ 1150.136 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

§ 1150.137 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called.

Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1150.138 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a per diem allowance as recommended by the Board and approved by the Secretary, incurred by them in the performance of their duties under this subpart.

§ 1150.139 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals;

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

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

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

(e) To disseminate information to producers or eligible organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(g) To establish advisory committees of persons other than Board members and pay the necessary and reasonable expenses and fees of the members of such committees;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1150.152 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1150.140 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairman and such other officers as may be necessary;

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

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

(d) To review all programs that promote milk and dairy products on a brand or trade name basis that have requested certification pursuant to § 1150.153, and to recommend to the Secretary whether such request should be granted;

(e) To develop and submit to the Secretary for approval, promotion, research, and nutrition education plans or projects resulting from research or studies conducted either by the Board or others;

(f) To solicit, among other proposals, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research and nutrition education plans or projects, and also including a general description of the proposed promotion, research and nutrition education programs contemplated therein;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional or State dairy promotion and research organizations or other organizations or entities for the development and conduct of activities authorized under §§ 1150.139 and 1150.161, and for the payment of the cost thereof with funds collected through assessments pursuant to § 1150.152. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budgets or budget which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(j) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(k) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(l) To give the Secretary the same notice of meetings of the Board, committees of the Board and advisory committees as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(m) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

Expenses and Assessments

§ 1150.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, after the first full year of operation of the order, administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal year. Such expenses shall be paid from assessments collected pursuant to § 1150.152.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1150.152, for administrative costs incurred by the Department after May 1, 1984.

§ 1150.152 Assessments.

(a) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof and shall remit the assessment to the Board.

(b) Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(c) In determining the assessment due from each producer pursuant to § 1150.152 (a) and (b), a producer who is participating in a qualified State or regional program(s) shall receive a credit for contributions to such program(s), but not to exceed the following amounts:

(1) In the case of contributions for milk marketed on or before May 31, 1984, up to the actual rate of contribution that was in effect under such program(s) on November 29, 1983, not to exceed 15 cents per hundredweight of milk marketed.

(2) In all other cases, the credit shall not exceed 10 cents per hundredweight of milk marketed.

(d) In order for a producer described in § 1150.152(a) to receive the credit authorized in § 1150.152(c), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified State or regional program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(e) In order for a producer described in § 1150.152(b) to receive the credit authorized in § 1150.152(c), the producer and the applicable qualified State or regional program must establish to the Board that the producer is contributing to a qualified State or regional program.

(f) The collection of assessments pursuant to § 1150.152 (a) and (b) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to § 1150.152 (a) and (b) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Dairy Promotion and Research Board." Remittances and reports specified in § 1150.171 shall be mailed to the location designated by the Secretary or the Board.

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

(a) Any organization which conducts a State or regional dairy product promotion, research or nutrition education program may apply to the Secretary for certification of qualification so that producers may receive credit pursuant to § 1150.152(c) for contributions to such program.

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Conduct activities as defined in §§ 1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

(2) Except for programs operated under the laws of the United States or any State, have been active and ongoing before enactment of the Act;

(3) Be financed primarily by producers, either individually or through cooperative associations;

(4) Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;

(5) Certify to the Secretary that any requests from producers for refunds under the program will be honored by forwarding to either the Board or a qualified State or regional program designated by the producer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to § 1150.152(c); and

(6) Not use program funds for the purpose of influencing governmental policy or action.

§ 1150.154 Influencing governmental action.

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

§ 1150.155 Adjustment of accounts.

Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1150.152. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1150.156 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments to the Board pursuant to § 1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Research and Nutrition Education

§ 1150.161 Promotion, research and nutrition education.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1150.139, 1150.140 and this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.

(b) Each plan or project authorized under § 1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan or project does not further the purposes of the Act, the Board shall terminate such plan or project.

(c) No plan or project authorized under § 1150.161(a) shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

Reports, Books and Records

§ 1150.171 Reports.

Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152 shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(a) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(d) The date any assessment was paid.

§ 1150.172 Books and records.

Each person who is subject to this subpart, and other persons subject to § 1150.171, shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necesssary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1150.173 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1150.181 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1150.140(i);

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1150.182 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1150.183 Personal liability.

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

§ 1150.184 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1150.181 shall apply to determine disposition of all such property.

§ 1150.185 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

§ 1150.186 Separability.

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

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0147.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From an Order

§ 1150.250 Words in the singular form.

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

§ 1150.251 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) "Judge" means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture;

(e) "Administrator" means the Administrator of the Department's Agricultural Marketing Service, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) "Federal Register" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it;

(g) "Order" means any regulation or any amendment thereto which may be issued pursuant to the Act;

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

(i) "Proceeding" means a proceeding before the Secretary arising under Section 118(a) of the Act;

(j) "Hearing" means that part of the proceeding which involves the submission of evidence;

(k) "Party" includes the Department;

(l) "Hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(m) "Presiding officer" means the administrative law judge conducting a proceeding under the Act;

(n) "Presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties; and

(o) "Petition" includes an amended petition.

§ 1150.252 Institution of proceeding.

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

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

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

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

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

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

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

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

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Subpart—Procedure for Certification of Milk Producer Organizations

§ 1150.270 General.

Organizations must be certified by the Secretary that they are eligible to represent milk producers and to participate in the making of nominations of milk producers to serve as members of the National Dairy Promotion and Research Board as provided in the Dairy and Tobacco Adjustment Act of 1983. Certifications of eligibility required of the Secretary shall be conducted in accordance with this subpart.

§ 1150.271 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the Secretary's stead;

(d) "Dairy Division" means the Dairy Division of the Department's Agricultural Marketing Service;

(e) "Producer" means any person engaged in the production of milk for commercial use;

(f) "Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products; and

(g) "Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.272 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart.

§ 1150.273 Application for certification.

Any organization whose membership consists primarily of milk producers may apply for certification. Applicant organizations should supply information for certification using as a guide "Application for Certification of Organizations," Form DA-26. Form DA-26 may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

§ 1150.274 Certification standards.

(a) Certification of eligible organizations shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) Geographic territory covered by the organization's active membership;

(2) Nature and size of the organization's active membership including the total number of active milk producers represented by the organization;

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

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

(5) Functions of the organization; and

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

(b) The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk, and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(c) The Secretay shall certify any organization which he finds meets the criteria under this section and his determination as to eligibility shall be final.

§ 1150.275 Inspection and investigation.

The Secretary shall have the right, at any time after an application is received from an organization, to examine such books, documents, papers, records, files, and facilities of an organization as he deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the organization is eligible for certification.

§ 1150.276 Review of certification.

Certifications issued pursuant to this subpart are subject to termination or suspension if the organization does not currently meet the certification standards. A certified organization may be requested at any time to supply the Dairy Division with such information as may be required to show that the organization continues to be eligible for certification. Any information submitted to satisfy a request pursuant to this section shall be subject to inspection and investigation as provided in § 1150.275.

§ 1150.277 Listing of certified organizations.

A copy of each certification shall be furnished by the Dairy Division to the respective organization. Copies also shall be filed in the Dairy Division where they will be available for public inspection.

§ 1150.278 Confidential treatment.

All documents and other information submitted by applicant organizations and otherwise obtained by the Department by investigation or examination of books, documents, papers, records, files, or facilities shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in the issuance of general statements based upon the applications of a number of persons, which do not identify the information furnished by any one person.

Effective date: All provisions contained in this Part 1150, except the provision in § 1150.152, are effective on and after April 1, 1984. The provisions in § 1150.152 are effective on and after May 1, 1984.

Signed at Washington, D.C., on: March 23, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

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Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-138]

Ports Designated for the Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations concerning ports designated for the importation of animals by adding Los Angeles, California, to the list of air and ocean ports having Veterinary Services (VS) inspection and quarantine facilities necessary for a quarantine station for the importation of animals. The facility will begin receiving animals on or about April 4, 1984. It is necessary to add Los Angeles to this list to reflect the existence of the VS facility at Los Angeles so that importers can make arrangements for the importation of animals.

This document also announces that it will be necessary to allow quarantine space at the VS facility at Los Angeles on a priority basis for horses that are to participate in the 1984 Olympics in Los Angeles in order to efficiently handle their entry into the United States.

DATES: Effective date of this interim rule is March 28, 1984. Written comments must be received on or before May 29, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. P. Dulin, Veterinary Services, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations), among other things, list ports which are designated for the importation of animals and birds into the United States. Paragraph (a) of § 92.3 of the regulations lists air and ocean ports having Veterinary Services (VS) inspection and quarantine facilities necessary for quarantine stations. Prior to the effective date of this document, Newburgh, New York, Miami, Florida, and Honolulu, Hawaii, were the only ports listed as air and ocean ports.

VS inspection and quarantine facilities necessary for a quarantine station for animals are being completed in Los Angeles. The facilities are scheduled to begin allowing air and ocean importations of animals on or about April 4, 1984. Therefore, this document amends § 92.3(a) of the regulations to add Los Angeles, California, as an air and ocean port for the importation of animals to reflect the existence of the VS facility at Los Angeles so that importers can make arrangements for the importation of animals.

Quarantine Space for Olympic Horses

It is anticipated that approximately 350 horses will be entering the United States from mid June through early August to participate in the 1984 Olympics in Los Angeles. In order to efficiently handle the entry of these animals into the United States, it will be necessary to allow quarantine space at the VS facility at Los Angeles on a priority basis for horses entering the United States for participation in the Olympics. It appears that during the time of the Olympics the space at the VS quarantine facility will be needed almost exclusively for horses imported for the Olympics.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

In addition to air and ocean ports, the regulations list Canadian border ports, Mexican border ports, and a number of other ports where Veterinary Services maintains facilities for the importation of certain animals. The regulations also provide a mechanism for allowing the importation of horses or birds at ports with privately operated facilities.

It appears that the addition of the port of Los Angeles to the list of air and ocean ports will not have a significant impact on the importation of animals into the United States. However, it provides another alternative facility for importation of animals and will reduce costs of importation for certain importers. Currently, almost all of the animals imported in the United States at Los Angeles are horses which are imported at one privately operated facility. This addition of a VS facility at the port of Los Angeles will impact on this privately operated facility.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have significant economic impact on a substantial number of small entities.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure are unnecessary and contrary to the public interest with respect to the addition of Los Angeles, California, to the list of air and ocean ports in § 92.3(a), and that good cause is found for making this action effective upon publication in the **Federal Register**. Comments concerning the addition of Los Angeles are being solicited for 60 days after publication of the document.

It is necessary to make this rule effective as soon as possible in order to relieve unnecessary restrictions and to reflect the existence of the VS facility at Los Angeles so that importers of animals