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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings; Amendment

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250–1400, (202) 720–6035.

SUPPLEMENTARY INFORMATION: The regulations governing the appearance of USDA employees as witnesses to testify or produce official documents in judicial or administrative proceedings are amended to provide specific authority for heads of USDA agencies to delegate their responsibilities under the regulations to subordinate officials in their agencies.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures; Witnesses.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, part 1, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. A new § 1.219 is added to subpart K to read as follows:

Subpart K—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings

* * * * *

§ 1.219 Delegations.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, the head of a USDA agency may delegate his or her responsibilities under this subpart, including the retirement to be notified of the receipt of a subpoena as provided in §§ 1.214(a) and 1.216(a) of this part, to employees of his or her agency as follows:

(1) In the National office of the agency, to a level no lower than two levels below the agency head;

(2) In a field component of an agency, to a level no lower than the official who heads a state office.

(b) Notwithstanding paragraph (a) of this section, the Chief of the Forest Service may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Forest Service, to a level no lower than a Deputy Chief of the Forest Service;

(2) In a field component of the Forest Service, to a level no lower than a Regional Forester or Station Director.

(c) Notwithstanding paragraph (a) of this section, the General Counsel may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Office of the General Counsel, to a level no lower than an Assistant General Counsel;

(2) In the field component of the Office of the General Counsel, to Regional Attorneys who may redelegate their responsibilities to Associate Regional Attorneys and Assistant Regional Attorneys who report to them.

(d) The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in § 1.214(b)(2) of this part may not be redelegated.

Done this 17th day of November, 1993, at Washington, DC.

Mike Espy,

Secretary.

[FR Doc. 93–29133 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

7 CFR Part 623

Emergency Wetlands Reserve Program

AGENCY: Soil Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 authorizes the use of funds appropriated under the Act, which are otherwise available for waterway and watershed repair under the Emergency Watershed Protection Program of the Soil Conservation Service (SCS), to restore cropland, which was inundated by the 1993 Midwest floods, to wetlands for the purposes of the Wetlands Reserve Program (WRP) authorized by title XII of the Food Security Act of 1985, as amended. This rule sets forth the policies, procedures, and requirements of the Emergency Wetlands Reserve Program (EWRP) that have been established to implement the 1993 emergency wetland restoration and conservation provisions. The EWRP will be available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. This rule does not affect the policies, procedures, or requirements of the Wetlands Reserve Program regulations issued by the Agricultural Stabilization and Conservation Services.

DATES: November 26, 1993.

COMMENT DEADLINE: In order to be considered, comments must be submitted in writing by December 27, 1993.

ADDRESSES: Send written comments to Edward G. Riekert, Director, Watershed

Projects Division, SCS, USDA, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Edward G. Riekert, telephone (202) 720–3527.

SUPPLEMENTARY INFORMATION: The WRP was established under the authority of sections 1237–1237f of the Food Security Act of 1985, as amended, 16 U.S.C. 3837–3837f, and is administered by the Agricultural Stabilization and Conservation Service (ASCS) pursuant to regulations found at 7 CFR part 703. Under the WRP, persons who own croplands and other related lands that have wetland characteristics or the potential for restoration of such characteristics and who agree to the restoration and long-term maintenance of those lands as wetlands may be eligible to enroll the lands in the WRP and receive a payment for the long-term maintenance easement and some cost-sharing assistance for the restoration costs.

The Emergency Supplemental Appropriations for Relief From Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103–75, 107 Stat. 739, provides appropriations for the repair of "damages to the waterways and watersheds resulting from the Midwest floods and other disasters of 1993" under the Emergency Watershed Protection Program of the SCS. See 107 Stat. 742. That section of the emergency appropriations legislation further provides that if the Secretary of Agriculture "determines that the cost of land and levee restoration exceeds the fair market value of an affected cropland, the Secretary may use sufficient funds provided (under this section) to accept bids from willing sellers to enroll such cropland inundated by the Midwest floods of 1993 in any of the affected States in the Wetlands Reserve Program as authorized by subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985."

Pursuant to the delegations of authority of the Department of Agriculture contained in 7 CFR part 2, the EWRP will be administered by the SCS as an adjunct to the WRP administered by the ASCS. The policies, procedures, and requirements provided in this rule are separate from and do not affect the policies, procedures, and requirements related to the WRP that are contained in 7 CFR part 703 and administered by ASCS.

Under the EWRP, SCS will purchase wetland conservation easements from persons owning cropland that was damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions with hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation, and if the owner voluntarily agrees to restore and maintain those conditions. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education. Furthermore, the wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

Eligible land for purchase will include farmed wetlands or prior converted wetlands (converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs. Farmed wetlands are lands that were drained, leveled, or otherwise manipulated prior to December 23, 1985 (the effective date of the Food Security Act of 1985) to the extent that agricultural crop production was made possible, but which continue to exhibit wetland characteristics. SCS will also consider for enrollment in the program:

(1) Farmed wetlands and adjoining lands with substantial wetland functions that are enrolled in the Conservation Reserve Program (CRP) administered under 7 CFR Part 1410 and were severely damaged by the 1993 Midwest floods;

(2) Other lands that would not otherwise be eligible if it is determined that inclusion in the program would promote the wetland values of the land.

The SCS State Conservationist will determine (1) the estimated costs of restoring the affected cropland to productive capacity and the estimated costs of repairing any associated levee, dike or other floodwater control systems; and (2) the fair market value (FMV) of the affected cropland based on an "as if restored" basis. If the estimated costs of the restoration and repair exceed the FMV of the affected cropland, the land will be eligible to be considered for enrollment in the EWRP. If the land is determined to be suitable for enrollment, the SCS State Conservationist will determine the FMV of the permanent easement offer that will be made. In determining the costs of cropland restoration, flood control system repair, the FMV of the affected cropland, and the FMV of the permanent easement, the SCS State Conservationist may use reasonably available information from appropriate sources to make the determinations.

Owners of lands determined to be eligible for enrollment in the EWRP and for which SCS makes an offer of enrollment may submit a bid of acceptance to the local SCS office.

To assure maximum benefits to the Federal Government, the SCS State Conservationist, in consultation with the U.S. Fish and Wildlife Service and input from a technical committee established by the State Conservationist, will establish a ranking process to determine the priority of the parcels offered for enrollment into the EWRP. The ranking process will consider floodway enhancement and environmental benefits per dollar of government expenditure for restoration and easement purchase. The State Conservationist will use the following criteria to establish a priority ranking for which enrollment in the EWRP will be offered and bids of acceptance accepted:

(1) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(2) Floodway expansion,

(3) Proximity to other protected wetlands,

(4) Level of wetland hydrologic conditions that could potentially be restored under the EWRP,

(5) Wetland functions and values,

(6) Likelihood of successful restoration of wetland values,

(7) Cost of restoration and easement purchases, and

(8) Other factors determined appropriate by SCS. Land behind a levee would have a lower priority than land where a levee does not exist or will be repaired.

The emergency watershed repair and wetland reserve provisions of Public Law 103–75 were passed in response to the devastating cropland losses caused by the Midwest floods of 1993. This disaster requires an immediate response to relieve flood damages. Complying with the normal comment procedures set forth in the Administrative Procedures Act would delay efforts to assist those harmed by the flood, further aggravating their losses, and would, therefore, be contrary to the public interest. Because of the urgency, SCS has determined that good cause exists to make this rule effective immediately. However, this interim rule affords the public a 30-day period following the effective date to submit written comments. SCS will consider all comments submitted in a timely manner and will amend the rule if justified by the comments. Comments should be submitted, in writing, to the individual listed above as the information contact.

This interim/final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The purpose of the EWRP is similar to that of the WRP, that is to restore certain cropland to wetlands and maintain them in wetland condition. An environmental assessment was prepared for WRP and it was determined that the program activities would not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement was not needed for the WRP and, likewise, is not needed for this program. Copies of the environmental assessment for the WRP are available upon request.

This program is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local entities. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements of the interim rule at 7 CFR part 623 have been submitted to OMB for approval under provisions of 44 U.S.C. chapter 33 in accordance with OMB emergency procedures set forth at 5 CFR 1320.18. An OMB control number will be assigned in accordance with these procedures. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 22 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 7 CFR Part 623

Administrative practices and procedures, Compliance procedures, Easements, Natural resources, Technical assistance, Wetlands Reserve Plan of Operations.

Interim Rule

Accordingly, Title VII of the Code of Federal Regulations is amended by adding a new part 623 to read as follows:

PART 623—EMERGENCY WETLANDS RESERVE PROGRAM

Authority: 16 U.S.C. 3837–3837f; Pub. L. 103–75, Chapter 1, 107 Stat. 739, 742.

§ 623.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Emergency Wetlands Reserve Program (EWRP). Under the EWRP, SCS will make offers to purchase wetland conservation easements from persons owning croplands that were damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions and if the owner voluntarily agrees to restore and maintain those conditions. The easements are to be purchased to promote the restoration and maintenance of wetland characteristics, such as hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education will thus be promoted. The wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

(b) The EWRP is available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Certain cropland areas within these States have been determined to have been inundated by the Midwest floods of 1993. As more fully defined and described in this part, eligible land may include farmed wetlands or prior converted wetlands (wetlands converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs.

§ 623.2 Definitions.

The following definitions shall be applicable for the purposes of this part:

(a) *Agricultural commodity*—means any crop planted and produced by annual tilling of the soil, or on an annual basis by one trip planters, or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be "considered planted to an agricultural commodity" during a crop year if, as determined by ASCS, as action of the Secretary prevented land from being planted to the commodity during the crop year.

(b) *Applicant*—means a person who submits to SCS an application to participate in the EWRP.

(c) *Commodity Credit Corporation*—a wholly owned government corporation within the U.S. Department of Agriculture.

(d) *Conservation District* (CD)—means a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

(e) *Conservation Reserve Program*—means the program under which long-term payments and cost-share assistance is provided to individuals to establish permanent vegetative cover on cropland that is highly erodible or environmentally sensitive.

(f) *Prior converted wetland*—means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) prior to December 23, 1985, for the purpose, or that has the effect, of making the production of agricultural commodities possible if such production would not have been possible but for such action.

(g) *Cost-share payment*—means the payment made by SCS to assist program participants in establishing the practices required in a WRPO.

(h) *Chief*—means the Chief of the Soil Conservation Service, or the Chief's designee.

(i) *Easement*—means the real property interest acquired by SCS under this part for wetland restoration and maintenance and which is properly filed with the appropriate local or State government official.

(j) *Easement area*—means the land to which the approved wetland restoration practices and wetland conservation restrictions are to be applied.

(k) *Fair market value (FMV)*—means the price that a willing seller would accept and a willing buyer would pay in an open, informed transaction.

(l) *Farmed wetland*—means wetland that was drained, dredged, filled, or otherwise manipulated prior to December 23, 1985 to the extent that the production of agricultural commodities was made possible, but which continues to meet wetland criteria [refer to 7 CFR 12.32(a)(3) for descriptions of farmed wetlands].

(m) *Floodwater control systems*—means dikes, levees, or other similar structural measures for the protection of cropland from flooding.

(n) *FWS*—means the Fish and Wildlife Service of the United States Department of the Interior.

(o) *Local SCS office*—means the office of the Soil Conservation Service serving the county or combination of counties in which the landowner's farm or ranch is located.

(p) *Participant*—means a person(s) owning land subject to a perfected easement purchased by the Soil Conservation Service under this part.

(q) *Offer*—means the total payment SCS will make to a landowner to purchase an easement.

(r) *Permanent easement*—means an easement in perpetuity.

(s) *Substantially altered lands*—means lands which have not been and are not now wetlands but could likely develop wetland characteristics in the future, as a result of the Midwest floods of 1993.

(t) *Practice*—means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

(u) *Technical assistance*—means the assistance provided to land owners to facilitate implementation of the WRPO.

(v) *Wetland*—means land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) does support a prevalence of such vegetation under normal circumstances.

§ 623.3 Eligible person.

To be eligible to participate in the EWRP, a person must be the owner of eligible land for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the time the enrollment offer is declared by SCS, as provided in this part. The person shall provide to SCS adequate proof of ownership of the land. SCS may waive the 12 month ownership requirement if:

(a) The land was acquired by will or succession as a result of the death of the previous owner; or

(b) Adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the EWRP.

§ 623.4 Eligible land.

(a) Except as otherwise provided in this section, land is eligible for enrollment in the EWRP only if SCS determines that the land:

(1) Was inundated by the Midwest floods of 1993;

(2) If restored to productive condition, would have a fair market value that is less than the estimated costs of restoring the land to productive condition and repairing related floodwater control systems;

(3) Is likely to have its wetland value restored with minimal costs; and

(4) Is wetland farmed under natural conditions, a farmed wetland or prior converted wetland, or substantially altered lands which are cropland; or

(5) Is wetland that has been restored on the land under a CRP contract, or under a Federal or State wetland restoration program with an easement for a period of less than 30 years.

(b) To be eligible for enrollment in the EWRP, land must also:

(1) Be determined by ASCS to have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 previous crop years; or

(2) Be land under a CRP contract, in which case, the land need only to have been planted to an agricultural commodity during 2 of the 1981 through 1985 crop years.

(c) Other lands may be considered eligible if the inclusion of such lands in the EWRP easement would significantly add to the functions and values of the wetlands to be restored under this part, as determined by SCS.

(d) The criteria and procedures contained in 7 CFR part 12 will be used to identify wetlands, converted wetlands, and farmed wetlands.

§ 623.5 Ineligible land.

Notwithstanding any other provisions of this part, the following land is not eligible for enrollment in the EWRP:

(a) Land that contains either timber stands or trees established in connection with a CRP contract;

(b) Lands owned or acquired by an agency of the Federal Government;

(c) Land already subject to a deed restriction prohibiting the production of agricultural commodities or the alternation of existing wetland hydrologic conditions;

(d) Land located between the pre-flood mainstem levees and the river; or

(e) Land that was restored to wetland conditions, as required under Part 12 of this title, to mitigate the conversion of wetland to cropland use.

§ 623.6 Transfer of lands from the CRP to the EWRP.

Land that is subject to an existing CRP contract administered under 7 CFR parts 704 and 1410 may be transferred into the EWRP only if:

(a) The land and landowner(s) meet the requirements of this part; and

(b) The application for transfer into the EWRP is approved by Commodity Credit Corporation (CCC), if found to be in the interest of the program. If such transfer is requested by the owner and approved by CCC, the CRP contract for the property will be terminated or otherwise modified subject to such terms and conditions as are mutually agreed by the landowner, CCC, and SCS.

§ 623.7 Terms of the easement.

Landowners will grant to SCS an easement which shall run with the land and be in favor of SCS and its assigns or delegates. The easement shall require the land to be monitored as specified by the WRPO to promote the purposes of this part, including but not limited to maintenance of the restored wetland for entire length of the easement. Such easement shall: (a) be a permanent reserve interest easement; (b) require that the maintenance of the land be in accordance with the terms of the easement and with the terms of the WRPO and shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owners' heirs and assigns; (c) grant to SCS a right of access in favor of SCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the easement. Maintenance of such access shall be the responsibility of the owner and their successors of any kind; (d) reserve to SCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; (e) reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; (f) be signed by each person with an interest of any kind in the land covered by the easement; (g) permanently prohibit use of the easement area for cropland, except to harvest an agricultural commodity planted before the easement is perfected; and (h) require permanent maintenance of the wetland conditions, except in the case of natural disaster.

§ 623.8 Easement value.

SCS offers for easements will be based on the fair market value, as determined by the SCS State Conservationist, of the land covered by the easements. Fair market value will be based on post-flood conditions as if reclaimed. Land easement values will be determined by the State Conservationist in consultation with a technical committee. A technical committee shall included representatives of: ASCS, Extension Service, and FWS. Additionally, the State Conservationist may collect information from other sources as he deems necessary. Coordination between States will be provided by the Chief, SCS.

§ 623.9 Easement priority.

The State Conservationist, in consultation with the FWS and with input from a technical committee and other interested Federal agencies, will establish a ranking process to establish the priority of parcels offered into the EWRP. This process will rank the floodway enhancement and environmental benefits per dollar of government expenditure on restoration and easement purchase. The factors for determining the priority for selection will consider the following:

(a) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(b) Floodway expansion,

(c) Proximity to other protected wetlands,

(d) Level of hydrology restored,

(e) Wetland function or values,

(f) Likelihood of successful restoration of wetland values,

(g) Cost of restoration and easement purchase, and

(h) Other factors as determined appropriate by SCS.

§ 623.10 Application to participate.

(a) A person seeking to enroll land in the EWRP must apply for enrollment on an approved SCS form. The application to participate must be filed with the local SCS field office during an announced period for such submissions.

(b) A person submitting an application to participate shall not be obligated to accept an SCS offer to purchase an easement if one is forthcoming.

(c) An application to participate must be signed by all owners of the property or their duly authorized representative(s).

§ 623.11 Obligations of the landowner.

(a) All owners of land who accept an EWRP offer from SCS shall:

(1) Comply with the terms of the easement.

(2) Comply with all terms and conditions of the WRPO for the full life of the easement.

(3) Ensure that the easement granted to SCS is superior to the interest of all other parties who may have an interest in the easement area, except as authorized by SCS. Such action shall include, but not be limited to, obtaining a written statement of consent to such a superior easement from those holding a security interest or any other encumbrance or the land covered by the easement. Additionally, the landowner shall perfect the easement with superior SCS interest in accordance with State law.

(4) Agree to the permanent retirement of the aggregate total of crop acreage bases, and allotment and mandatory quota on the farm or ranch in order to maintain the base allotment on quota acres at or below the number of acres of cropland after the easement has been perfected.

(5) Not allow grazing or commercial use of the land covered by an easement except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the EWRP easement.

(6) Comply with Federal or State noxious week laws in the manner specified in the WRPO.

(7) Control other identified weed and pest species, in the manner specified in the WRPO.

(8) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the easement, the contract, and the easement.

(9) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program.

(10) Implement any additional provisions that are required by SCS in consultation with FWS in the contract, WRPO, or easement, in order to, as determined by SCS, facilitate the administration of the EWRP.

(11) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such acres subsequent to perfection of the easement by the landowner, except as provided for in the easement or WRPO.

(12) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. Owners may enter into agreements with Federal or State agencies or private organizations to assist in the management of the easement area. No SCS funds will be provided to these agencies or organizations for management expenses. Responsibility for management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether arrangements are made for third-party management.

(13) Agree that each person with an interest in the land covered by an easement under EWRP shall be jointly and severally responsible for compliance with the WRPO, the easement, the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement, or provisions of this part.

(14) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(15) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO.

(2) Apply pesticides or fertilizers on enrolled land or mow such land, only as provided for in the WRPO.

(3) Not engage in any activities on other land on the farm on which the easement exists that will, as determined by SCS; (i) alter the flow of surface or subsurface water into or out of the easement area except as specified in the

WRPO; or (ii) be otherwise inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant. However, if the SCS determines that the activities of the person were beyond the control of the program participants, SCS may adjust the remedies provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

§ 623.12 Payments to landowners by SCS.

(a) SCS will share the cost with landowners of rehabilitating the enrolled land in the EWRP as provided in the WRPO. The amount of the cost-share assistance shall be specified in the contract. Eligible costs for such cost-share assistance by SCS shall only include those costs which SCS determines are appropriate and shall be subject to the following restrictions:

(1) The State Conservationist will establish cost-share rates of between 75 to 100 percent of the historical cost of establishing or installing the practices specified in the WRPO; or pay the average cost of establishing the practices specified in the WRPO, based on the historical cost of establishing the practices in the State;

(2) Cost-share payments may be made only upon a determination that an approved practice or an identifiable unit of the practice has been completed in compliance with SCS approved standards and specifications; and

(3) Cost-share payments may not be made for the maintenance of the practice except as specifically permitted in writing by the State Conservationist.

(b) Notwithstanding paragraph (a)(3) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the EWRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) SCS shall pay the amount agreed upon by SCS and the landowner for the purchase of the easement in a lump-sum amount after the easement is perfected in compliance with State law, except in the case of paragraph (c)(2) of this section.

(2) For all easements, SCS shall pay no more than 75 percent of the total easement price pending completion of the practices to restore the wetlands as provided under the WRPO. The remaining amount shall be paid when SCS determines the restoration is complete.

(d) After an easement is perfected, SCS will reimburse landowners for fair and reasonable expenses incurred for title searches, filing expenses, and related costs, as determined by SCS.

§ 623.13 Wetlands reserve plan of operations.

(a) After SCS has accepted the applicant for enrollment in the program, a WRPO will be developed by the landowner and SCS, in consultation with FWS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the eligible land shall be restored, operated, and maintained to accomplish the goal of the program, including, but not limited to: (i) measures to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and (ii) measures to control other specified species of weeds, insects or pests;

(3) Specify compatible land uses for personal enjoyment for which the landowner may be compensated. These compatible land uses shall be reserved to the landowner in the easement. Such uses may include, among others: (i) recreational use, hunting and fishing; (ii) manage timber production including harvesting; and (iii) managed haying or grazing consistent with the goals of the program;

(4) Set out cost estimates of the practices required by the WRPO, the offer for the easement, and other reimbursement costs;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) Contain other provisions or limitations as SCS, in consultation with the FWS, determines to be necessary.

(c) SCS in consultation with FWS will collect from State or Federal agencies whatever additional information is deemed necessary for the development of the WRPO with the landowner.

(d) The WRPO must be signed by SCS, FWS, Conservation District (CD), and the landowner(s). However, if agreement between SCS and FWS, or CD at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS or CD.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the contract, the easement, or this part.

(g) WRPO, where appropriate, will provide for the development of a tree planting plan with the assistance of the FS or State forestry agency.

(h) The WRPO, where appropriate, will provide for the development by SCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of either SCS, FWS, the owner and upon the concurrence of all three parties.

§ 623.14 Easement modifications.

After the easement has been perfected, no change will be made in the easement without a written request by the participant and the written consent of the Chief. Approval may be granted to achieve the goals of EWRP or facilitate the practical administration and management of the easement area or the program and the approval will not adversely affect the functions and values for which the easement was established. A modified easement shall be perfected in accordance with State law and SCS superior interest shall be reserved by the landowner in accordance with §§ 623.7 and 623.11(a)(3).

§ 623.15 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a EWRP easement, such new owner shall be subject to the terms and conditions of the easement. The participant who is the signatory to the easement shall be entitled to receive all remaining payments, if any, for the purchase of the easement. Eligible cost-share payments shall be made to the participants, with respect to costs actually incurred.

(b) Upon the transfer of the property subject to an EWRP easement, any remaining cost-share payments shall be paid to the new owner or purchaser only if the new owner or purchaser becomes a party to the WRPO within 60 days of the perfection of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the participant and the buyer. The new owner or purchaser shall be responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the perfection of the easement shall void any SCS offer or WRPO unless the new owner agrees to accept the offer within 60 days of the perfection of the deed transferring the land to the new owner.

§ 623.16 Monitoring and enforcement of easement terms and conditions.

(a) SCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary by SCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement and the WRPO.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the EWRP easement, or any related agreements, SCS may at the expense of any person who is subject to the EWRP easement correct such deficiency. Such SCS action shall be in addition to other remedies available to SCS.

(c) Monitoring and enforcement responsibilities may be delegated by SCS at any time to other Federal or State agencies. Landowners may transfer management responsibilities only to Federal, State, or local agencies or private organizations that have been approved by SCS in advance as having the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

§ 623.17 Violations and remedies.

(a) If a violation of the terms and conditions of the contract, the WRPO, or the recorded EWRP easement occurs, the easement shall remain in force and SCS may:

(1) Require the owner to fully restore the easement area to fulfill the terms and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from SCS for any purpose under this part, to refund all or part of such payments received together with interest, as determined appropriate by SCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated. The owner of the property shall reimburse SCS for all costs incurred including, but not limited to, legal fees.

§ 623.18 Access to land.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the participant showing status of all ownership interest in lands subject to this part.

§ 623.19 Assignments.

Any participant entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 623.20 Appeals.

(a) A participant in the EWRP may obtain a review of any administrative determination concerning land eligibility, development of a WRPO, or any adverse determination under this part in accordance with the administrative appeal regulations provided in part 614 of this title.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of SCS under these procedures. No adverse action will be taken against a participant under this part until the administrative appeals have been exhausted.

§ 623.21 Scheme and device.

(a) If it is determined by SCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by SCS, and the contract with the landowner may be terminated. In such a case, SCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to SCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 623.22 Filing of false claims.

If it is determined by SCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by SCS, and any amounts otherwise due such participant shall be withheld.

Signed this 19th day of November, 1993, in Washington, DC.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93–29005 Filed 11–26–93; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1160

[DA–92–29–B]

RIN 0581–AA44

Fluid Milk Promotion Program; Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes an order implementing a national program for fluid milk promotion and consumer education. The program will be funded by a mandatory assessment on fluid milk products processed and marketed commercially in consumer-type packages by fluid milk processors in the 48 contiguous States. The order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Act Amendments of 1993.

The order was approved by at least 50 percent of the fluid milk processors voting in the referendum, held October 12–21, 1993, and by fluid milk processors voting in the referendum that marketed 60 percent or more of the volume of fluid milk products marketed in the United States by all processors of fluid milk during the representative period of May 1993.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie O. Tanner, Head, Promotion and Research Staff, room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to Submit Comments and Notice of Public Meeting: Issued April 16, 1993; published April 21, 1993 (58 FR 21512).

Proposed Rule and Notice of Referendum: Issued August 30, 1993; published September 3, 1993 (58 FR 46877).

Final rule; Procedure for Conduct of Referenda and Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order; Issued August 30, 1993; published September 3, 1993 (58 FR 46761).

This final order is authorized under the Fluid Milk Promotion Act of 1990 (Title XIX, subtitle H, of the Food, Agriculture, Conservation, and Trade Act of 1990); (Pub. L. 101–624), which was enacted on November 28, 1990, and amended on August 11, 1993 (Pub. L. 103–72), hereinafter referred to as the Act.

We are issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a fluid milk promotion order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The most current information available indicates that there currently are about 620 fluid milk processors in the 48 contiguous States. This final rule exempts about 40 percent of these processors on the basis that they process and distribute no more than 500,000 pounds of fluid milk products per month. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration (13 CFR 121.601) as those employing fewer than 500 employees. Under the fluid milk promotion order, most of the fluid milk processors who would be subject to the provisions of the order would be classified as small entities.

The promotion order requires each fluid milk processor who processes and markets commercially over 500,000 pounds of fluid milk products per month to remit 20 cents per hundredweight of such products. Initially, such collections will occur only for six months during the first 30 months the order is effective, and total about $55 million. Because the 20-cent rate amounts to less than 2 percent of the per hundredweight cost of raw milk to affected processors, the economic impact of the assessment will not be significant.

While this final rule imposes certain recordkeeping requirements on fluid milk processors, any information required under this rule would be readily available from records currently maintained by all processors. Thus, any increased recordkeeping resulting from this rule would be insignificant.

Based on the above, the Administrator of AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0505–0001. This action sets forth the provisions of the final order which establishes a national program for fluid milk promotion to be funded by fluid milk processors. Information collection requirements in these regulations include:

(1) A periodic report by each fluid milk processor. The estimated maximum number of respondents who are subject to monthly reporting requirements is 365. They would submit one report for each of the second through seventh months of the first 30 months of the program, and then report monthly if the program is continued. Since fluid milk processors who process and distribute not more than 500,000 pounds of fluid milk products per month are exempted from the order, an estimated additional 255 exempt processors would submit only one response for each fiscal period (no more frequently than once per year). The estimated average reporting burden is 30 minutes per response.

(2) A nominee background statement form for Board member nominees. The estimated number of respondents for this form is 60 during the first year of the program and approximately 20 annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of 60 minutes per response.

(3) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated maximum number of recordkeepers necessary to comply with this requirement is 620, each of whom will have an estimated average annual burden of 6 hours.

It should be noted that under the law the promotion program expires at the end of 1996.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national fluid milk promotion program. This program will be funded by an assessment on fluid milk processors. Milk processors who process and market over 500,000 pounds of milk per month will be required to remit 20 cents per hundredweight.

The Act provided for the submission of a proposal to establish a fluid milk promotion order by processors marketing at least 30 percent of the volume of fluid milk products marketed by all processors within the 48 contiguous states. The Secretary published the proposed order on April 21, 1993, and a public meeting was held April 29, 1993, to provide an opportunity for interested persons to question proponents regarding the proposal. In addition, written comments were invited, to be submitted no later than May 21, 1993.

A proposed rule and notice of referendum was issued on August 30, 1993, and published on September 3, 1993 (58 FR 46877), summarizing and responding to the comments received, and containing the provisions of the proposed rule on which fluid milk processors were to vote. At the same time, a final rule setting forth the procedure for conduct of referenda and rules of practice governing proceedings on petitions to modify or to be exempted from an order also was issued and published.

Additional Findings

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. It will require a significant amount of time for the National Fluid Milk Processor Promotion Board to be nominated, selected, and begin to function. Proponents of the program have requested that it become operational as soon as possible so that educational and promotional activities can be in place as soon as possible. Therefore, to assure the timely implementation of this Order, this final rule shall be effective on December 10, 1993.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

For the reasons set forth in the preamble, title 7 of the Code of Federal Regulations is hereby amended by adding part 1160 to read as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

Subpart—Fluid Milk Promotion Order

Definitions

Authority: 7 U.S.C. 6401–6417.

Subpart—Fluid Milk Promotion Order

Definitions

§ 1160.101 Act.

Act means the Fluid Milk Promotion Act of 1990, Subtitle H of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 6401–6417, and any amendments thereto.

§ 1160.102 Department.

Department means the United States Department of Agriculture.

§ 1160.103 Secretary.

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

§ 1160.104 United States.

United States means the 48 contiguous states in the continental United States and the District of Columbia, except that United States means the 50 states of the United States of America and the District of Columbia under the following provisions: the petition and review under section 1999K of the Act, enforcement under section 1999L of the Act, and investigations and power to subpoena under section 1999M of the Act.

§ 1160.105 Board.

Board means the National Processor Advertising and Promotion Board established pursuant to 7 U.S.C. 6407(b)(1) and this subpart (hereinafter known as the National Fluid Milk Processor Promotion Board or Board).

§ 1160.106 Person.

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

§ 1160.107 Fluid milk product.

(a) *Fluid milk product* means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) *Fluid milk product* does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specifically prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent milk solids, and whey.

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid milk products during the representative month set forth below:

(1) For the first fiscal period, the representative month shall be May 1993;

(2) For the second fiscal period, the representative month shall be the month that the Secretary uses as the representative month in the conduct of the continuation referendum; and

(3) For each additional fiscal period, the representative month shall be the first month of the fiscal period.

(b) Any person who did not qualify as a fluid milk processor for a fiscal period because of the 500,000-pound limitation shall not later qualify as a fluid milk processor during that fiscal period even though the monthly volume limitation is later exceeded during that period.

(c) Any person who qualified as a fluid milk processor for a fiscal period and whose monthly marketings of fluid milk products later become 500,000 pounds or less shall no longer qualify as a fluid milk processor during that fiscal period beginning with the month in which the marketings first dropped below the volume limitation.

(d) For the purpose of determining qualification as a fluid milk processor, each processor of fluid milk products shall report for the representative month of each fiscal period the hundredweight of fluid milk products processed and marketed by the processor.

§ 1160.109 Milk.

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

§ 1160.110 Class I price.

Class I price is the price that is established for Class I milk in each marketing area under milk marketing orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674.

§ 1160.111 Promotion.

Promotion means the following activities:

(a) *Consumer Education,* which means any program utilizing public relations, advertising or other means devoted to educating consumers about the desirable characteristics of fluid milk products and directed toward increasing the general demand for fluid milk products.

(b) *Advertising,* which means any advertising or promotion program involving only fluid milk products and directed toward educating consumers about the positive attributes of fluid milk and increasing the general demand for fluid milk products.

§ 1160.112 Research.

(a) *Research* means market research limited to the support of promotion and consumer education efforts.

(b) *Research* does not include research directed to product characteristics such as nutrients; product development including new products; improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of promotion and consumer education activities in expanding sales of fluid milk products.

§ 1160.113 Fiscal period.

Fiscal period means prior to a continuation referendum, the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.

§ 1160.114 Eligible organization.

Eligible organization means an organization eligible to nominate members of the Board and which meets the following criteria:

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5), or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5), or (6));

(b) Is governed by a board comprised of a majority of fluid milk processors; and

(c) Represents fluid milk processors on a national basis whose members process more than 50 percent of the fluid milk products processed and marketed within the United States.

§ 1160.115 Milk marketing area.

Milk marketing area means each area within which milk being marketed is subject to a milk marketing order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674, or applicable state laws.

§ 1160.116 Initial referendum.

Initial referendum means the referendum among fluid milk processors that the Secretary conducted prior to the effective date of this subpart.

§ 1160.117 Continuation referendum.

Continuation referendum means that referendum among fluid milk processors that the Secretary shall conduct as provided in § 1160.501.

National Fluid Milk Processor Promotion Board

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than one member. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for the fluid milk processor with whom the member was associated at the time of his or her appointment to the Board shall disqualify that member for membership on the Board for the remainder of that term.

(b) In selecting the 15 Board members who represent geographic regions, one member shall be selected from each of the following regions:

Region 1. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region 2. New York and New Jersey.

Region 3. Delaware, Maryland, Pennsylvania, Virginia, and the District of Columbia.

Region 4. Georgia, North Carolina and South Carolina.

Region 5. Florida.

Region 6. Ohio and West Virginia.

Region 7. Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Region 8. Illinois and Indiana.

Region 9. Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

Region 10. Texas.

Region 11. Arkansas, Iowa, Kansas, Missouri, Nebraska and Oklahoma.

Region 12. Arizona, Colorado, New Mexico, Nevada, and Utah.

Region 13. Idaho, Montana, Oregon, Washington and Wyoming.

Region 14. Northern California which shall be composed of the Northern California Marketing Area and the South Valley Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.

Region 15. Southern California which shall be composed of the Southern California Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.

§ 1160.201 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 year, two years, and three years, as determined by the Secretary. The terms of all Board members shall expire upon the suspension or termination of the order except as provided in § 1160.502.

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for a 3-year term.

§ 1160.202 Nominations.

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

(a) The Secretary shall solicit nominations for the initial Board from individual fluid milk processors and other interested parties, including eligible organizations. Fluid milk processors and other interested parties may submit nominations for positions on the Board for regions in which they are located or market fluid milk, and for at-large members. Eligible organizations may submit a slate of nominees for seats in all regions and for at-large members.

(b) After the appointment of the initial Board, the Secretary shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring, and shall solicit nominations for such positions in the manner described in paragraph (a) of this section. Nominations for such positions should be submitted to the Secretary not less than 120 days prior to the expiration of members' terms.

§ 1160.203 Nominee's agreement to serve.

Each nominee for Board membership must file with the Secretary at the time of nomination a written agreement to serve on the Board if appointed.

§ 1160.204 Appointment.

From the nominations made pursuant to § 1160.202, the Secretary shall appoint the members of the Board on the basis of representation provided for in §§ 1160.200 and 1160.201.

§ 1160.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations made by individual fluid milk processors and other interested parties, including eligible organizations, for the Board, or from nominations made by the Board.

§ 1160.206 Procedure.

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

(b) The Board may take action upon the concurring votes of a majority of members by mail, telephone, telegraph, or other means of electronic communication when, in the opinion of the chairperson 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.

§ 1160.207 Compensation and reimbursement.

The members of the Board and trustees, if any, named under § 1160.502, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1160.208 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 educate consumers and promote the use of fluid milk products 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 employ such persons as the Board deems necessary and determine the duties and compensation of such persons;

(f) To contract with eligible organizations or other persons to conduct activities authorized pursuant to this subpart;

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

(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 § 1160.211 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.

§ 1160.209 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of one year and not more than two consecutive terms, and to select such other officers as may be necessary;

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects. However, for the initial fiscal period, the budget shall be such sum as may be collected from assessments paid during that period;

(c) To develop and submit to the Secretary for approval promotion and consumer education, and research plans or projects;

(d) To the extent practicable, carry out consumer education and promotion programs under § 1160.301 in such a manner as to ensure that advertising coverage in each of the regions defined in § 1160.200 is proportionate to funds collected from each such region;

(e) To disseminate information to fluid milk processors or eligible organizations;

(f) To maintain minutes, books and records that accurately reflect all of the acts and transactions of the Board, which shall be available to the Secretary for inspection and audit, and prepare and promptly report minutes of each Board meeting to the Secretary and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to account with respect to the receipt and disbursement of all funds entrusted to it;

(g) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1160.211 and income from such assessments. 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 budget(s) showing the estimated cost of such plan or project;

(2) Any such plan or project shall be adopted 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 all activities conducted pursuant to the contract or agreement, and provide accounts of all funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board periodically may audit the records of the contracting parties;

(h) For the initial fiscal period, the Board shall contract, to the extent practicable and subject to the approval of the Secretary, with an eligible organization to carry out the provisions of this subpart;

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

(j) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at the end of the first 15 months of the initial fiscal period, at the end of the initial fiscal period, and at least once each fiscal period thereafter as well as at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board and committees of the Board, including actions conducted under § 1160.206(b), as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

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

(m) The Board shall take reasonable steps to coordinate the collection of assessments, and promotion, education, and research activities of the Board, with the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)); and

(n) The Board shall conduct advertising using third parties only through contracts which shall prohibit the third party from selling, offering for sale, or otherwise making available advertising time or space to private industry members conducting brand-name advertising which immediately precedes, follows, appears in juxtaposition, or appears in the midst of Board-sponsored advertising.

§ 1160.210 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 administration, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart; except that, after the Board's first year, it shall not spend on its administration more than 5 percent of the assessments collected during any fiscal period subsequent to the initial fiscal period. Such administrative expenses shall be paid from assessments collected pursuant to § 1160.211.

(b) The Board shall reimburse the Secretary for administrative costs incurred by the Department from assessments collected pursuant to § 1160.211.

(c) Within 30 days after funds are remitted from Regions 14 and 15, the Board shall provide a grant of 80% of such funds to the entity authorized by the laws of the State of California to conduct an advertising program for fluid milk products in that State for the purpose of implementing a coordinated advertising program in the markets within those regions. Such grant shall be provided with the approval of the Secretary on the following conditions:

(1) The granted funds shall be utilized to implement a fluid milk promotion campaign within the markets within those regions. Verification of the implementation of this program shall be provided to the Board.

(2) The Board shall ensure that the recipients of these funds implement a research and evaluation program to determine the effect of such program on consumption of fluid milk within the region.

(3) The recipient of these funds must provide to the Board data from the research and evaluation programs so that the Board can determine the effect of the program on consumption of fluid milk.

§ 1160.211 Assessments.

(a) (1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor; *Provided, however,* That for the initial fiscal period the assessment due pursuant to this section shall be paid only on fluid milk products marketed during the second through the seventh months of that fiscal period. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board, and shall remit such assessments to the Board when it is convened.

(2) Within 30 days after the effective date of this subpart, the Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk products in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

(3) Each processor responsible for remitting an assessment shall remit it to the Board not later than the last day of the month following the month that the assessed milk was marketed.

(b) Such assessments shall not:

(1) Reduce the prices paid under the Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(2) Otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) Otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) Money remitted to the Board or the Board's designated agent shall be in the form of a negotiable instrument made payable to the Board or its agent, as the case may be. Processors must mail remittances and reports specified in §§ 1160.108, 1160.211(a)(1), 1160.213, 1160.214, and 1160.401 to the location designated by the Board or its agent.

§ 1160.212 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.

§ 1160.213 . Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments as provided in § 1160.211. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

§ 1160.214 Charges and penalties.

(a) Late-payment charge. Any unpaid assessments 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 determined at a date later than prescribed by this subpart because of the failure of a processor 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 receipt of a payment by the Board will be based on the earlier of the postmark date or the actual date of receipt.

(b) Penalties. The Secretary may assess any person who violates any provision of this subpart a civil penalty of not less than $500 nor more than $5,000 for each such violation. In the case of a willful failure to pay an assessment as required by this subpart, in addition to the amount due, the Secretary may assess an additional penalty of not less than $10,000 nor more than $100,000 for each such violation. The amount of any such penalty shall accrue to the United States, which may recover such amount in a civil suit. The remedies provided in this section are in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Consumer Education and Research

§ 1160.301 Promotion, consumer education and research.

(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 §§ 1160.208 and 1160.209. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of consumer education, promotion and research activities with respect to fluid milk products; and

(2) The evaluation of consumer education, promotion and research activities implemented under the direction of the Board, and the communication of such evaluation to fluid milk processors and the public.

(b) The Board shall periodically review or evaluate each plan or project authorized under § 1160.301(a) to ensure that it contributes to an effective program of promotion, consumer education and research. If the Board finds that any such plan or project does not further the purposes of the Act, the Board shall terminate that plan or project.

(c) No plan or project authorized under § 1160.301(a) may employ unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(d) No plan or project authorized under § 1160.301(a) may make use of a brand or trade name of a fluid milk product, except that this paragraph does not preclude the Board from offering program material to commercial parties to use under such terms and conditions as the Board may prescribe, subject to approval by the Secretary.

Reports, Books and Records

§ 1160.401 Reports.

Each fluid milk processor marketing milk and paying an assessment under § 1160.211 shall be required to report upon the remittance of such assessments such information as the Board or the Secretary may require. Such information shall include but not be limited to the following:

(a) The quantity of fluid milk products marketed that is subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The reason, if necessary, why the remittance is less than the number of hundredweights of milk multiplied by 20 cents; and

(d) The date any assessment was paid.

§ 1160.402 Books and records.

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

§ 1160.403 Confidential treatment.

(a) All persons, including agents and former agents of the Board, all officers and employees and all former officers and employees of the Department, and all officers and all employees and all former officers and employees of contracting agencies having access to commercial or financial information obtained from such books, records or reports under the Act and this subpart shall keep such information confidential, and not make it available to Board members. Only those persons, as determined by the Secretary, who have a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, they shall disclose only that information the Secretary deems relevant, 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, however, shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of processors, individuals, groups of individuals, partnerships, corporations, associations, cooperatives, or other entities subject to this subpart or statistical data collected from such sources, which statements do not identify the information furnished by any such parties, and

(2) The publication, at the direction of the Secretary, of the name of any

processor, individuals, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) Except as otherwise provided in this subpart, information obtained under this subpart may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(c) Any person violating this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if such person is an agent of the Board or an officer or employee of the Department shall be removed from office.

(d) Nothing in this subsection authorizes the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

Miscellaneous

§ 1160.501 Continuation referenda.

(a) At the request of the Board, but not later than one month after the initial fiscal period, the Secretary shall conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, to determine whether the order should be suspended or terminated.

(b) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by all fluid milk processors.

(c) Any suspension or termination of the order on the basis of a referendum conducted pursuant to this section must be favored:

(1) By at least 50 percent of the fluid milk processors voting in the referendum; and

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by all processors of fluid milk.

(d) If the Secretary determines that the suspension or termination of the order is favored in the manner set forth in § 1160.501(c), the Secretary shall take such action within 6 months of such determination.

§ 1160.502 Proceedings after suspension or termination.

(a) Upon the suspension or termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Once the Secretary has designated such members as trustees, they shall become trustees of all the funds and property that the Board owns, possesses, or controls, including unpaid and undelivered property or any other unpaid claim existing at the time of such termination. The actions of such trustees shall be subject to approval by the Secretary.

(b) The said trustees shall:

(1) Serve as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements that it entered pursuant to §§ 1160.208 and 1160.209;

(3) Account for all receipts and disbursements and deliver to any person designated by the Secretary all property on hand, together with all books and records of the Board and the trustees; and

(4) At the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in the Secretary's designee full title and right to all of the funds, property, and claims of the Board or the trustees.

(c) The Secretary's designee shall be subject to the same obligations with respect to funds, property or claims transferred or delivered pursuant to this subpart as the Board and the trustees.

(d) The Board, the trustees or the Secretary's designee shall deliver to the Secretary any residual funds not required to pay liquidation expenses, which funds may be used, to the extent practicable, to continue one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1160.503 Effect of suspension, termination or amendment.

Unless otherwise expressly provided by the Secretary, the suspension or 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 of the Board or its trustees which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

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

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

§ 1160.504 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 by such member or employee, except for acts of dishonesty or willful misconduct.

§ 1160.505 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 are the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Section 1160.502 governs the disposition of all such property upon suspension or termination of this subpart.

§ 1160.506 Amendments.

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

§ 1160.507 Report.

The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this subtitle during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

§ 1160.508 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or any circumstances is held invalid, such declaration or holding shall not offset the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances.

Dated: November 16, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-28790 Filed 11-26-93; 8:45 am]

BILLING CODE 3410-02-P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560-AD31

Price Support Loan Requirements; Farmer Owned Reserve Program Eligibility Requirements

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the Price Support Loan Program and the Farmer-Owned Reserve (FOR) Program which are conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended, (the 1949 Act). The interim rule, made final by this document, amended these provisions to offer producers an additional opportunity to declare their intentions for the 1992 feed grains FOR Program, and allow extensions of maturing 1990 FOR wheat loans and 1992 wheat and feed grain loans.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Overbo, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), PO Box 2415, Washington, DC 20013-2415; telephone 202-720-8223.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because:

(1) This rule will not have a significant adverse impact on a substantial number of small entities since this rule liberalizes benefits and,

(2) The CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

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

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are retroactive to the extent that this rule extends price support availability for loans which may have matured. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collections requirements for participating in the FOR Program have been approved for use by the Office of Management and Budget (OMB) through August 31, 1994, and assigned OMB No. 0560-0087. The amendments to 7 CFR part 1421 set forth in this final rule do not impose any new or revised information collection requirements to participate in FOR from those previously reviewed and approved by OMB.

Public reporting burden for these collections is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250-0001; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0087), Washington, DC 20503.

No comments were received during the comment period which ended on September 27, 1993.

Accordingly, under the authority of 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR part 1421 which was published at 58 FR 45039 on August 26, 1993, is adopted as a final rule without change.

Signed in Washington, DC on November 20, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-29135 Filed 11-26-93; 8:45 am]

BILLING CODE 3410-05-P

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7 CFR Part 1446

RIN 0560-AD33

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts without change the interim rule published in the **Federal Register** (58 FR 41625) on August 5, 1993, which amended the regulations for peanuts to increase, from $1.00 to $2.00, the maximum per net ton deduction that may be made from producer price support advances by the Southwestern Peanut Growers' Association (SWPGA) to fund activities of the association outside the price support program. The deductions are made only upon prior agreement of the