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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1469 and 1470

RIN 0560-AG35

Wool and Mohair Market Loss Assistance Program and Apple Market Loss Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act), related to the Wool and Mohair Market Loss Assistance Payment Program and the Apple Market Loss Assistance Payment Program. Other provisions of the 2001 Act will be implemented under separate rules.

DATES: Effective March 5, 2001.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, (202) 720-1919.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 840 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387) requires that the regulations necessary to implement these provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be Economically Significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA 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 this rule.

Environmental Evaluation

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA 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 this rule. Further, in any case, these provisions do not impose any mandates on State, local or tribal governments, or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 840 of Pub. L. 106-387 requires that the regulations necessary to implement these provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of § 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This rule is considered a major rule for the purposes of SBREFA. However, the rule affects the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay those provisions of this rule, as expressed in Pub. L. 106-387, they are issued as final and are effective immediately.

Paperwork Reduction Act

Section 824 of Pub. L. 106-78 requires that the regulations implementing these provisions be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published, and Information Collection Packages and requests for approval will be submitted to OMB.

Background

This rule will implement requirements of Pub. L. 106-387 related to the Wool and Mohair and Apple Market Loss Assistance Programs.

Descriptions of this rule's provisions follow.

(1) 7 CFR Part 1469—Wool and Mohair Market Loss Assistance Payment Program

This rule implements the requirements of § 814 of Pub. L. 106–387 related to the Wool and Mohair Market Loss Assistance Payment Program. Section 814 provides that the Secretary shall use no more than \$20 million of CCC funds to make payments directly to producers of wool, and producers of mohair, for the 2000 marketing year. Pub. L. 106–554 mandated a Government-wide rescission of 0.22 percent of appropriated funds, reducing the funding for the Wool and Mohair Market Loss Assistance Payment Program to \$19.956 million. The 2001 Act requires the Secretary of Agriculture to make direct payments equal to 40 cents per pound for wool and mohair. Producers wanting to participate in the program must file an application for payment by April 13, 2001, or such other date as may be set by the Deputy Administrator for Farm Programs, CCC. Applications will be spot-checked and validated by FSA. Payment will be made only for wool and mohair shorn in the United States in 2000 from live domestic animals owned by the producer for 30 days or more. These restrictions are intended to insure that coverage is limited to actual wool producers, as opposed to meat producers, for wool actually produced as wool, not a by-product, during the relevant time period allowed for by the statute. Other restrictions will also apply.

(2) 7 CFR Part 1470—Apple Market Loss Assistance Payment Program

This rule implements § 811 of Pub. L. 106–387, which directs the Secretary of Agriculture to use \$100 million of the Commodity Credit Corporation (CCC) funds to provide assistance to producers for their 1998 and 1999 apple production. The Government-wide 0.22% rescission of appropriated funds reduces that amount to \$99.78 million.

During the past few years a number of factors have produced a serious economic crisis that threatens the existence of apple producers throughout the United States. Apples are grown in every State in the continental United States, and are grown commercially in 36 States. Twenty years of increasing world production, stagnant domestic consumption, natural disasters and low-priced imports converged 2 years ago, resulting in apple growers receiving the lowest prices since the late 1980's for

1998 and 1999 apples bound for fresh market sale. At the same time, a flood of cheap apple juice concentrate imports from the People's Republic of China dramatically reduced the demand for processing apples and caused juice apple prices to plummet, further eroding the industry's overall price structure. The revenue of apple producers plummeted in 1998 and recovered in 1999, but failed to reach revenue earned in previous years. U.S. apple growers received an average of 21.2 cents per pound for fresh market apples from the 1999 crop, up from 17.3 cents per pound in 1998, a historical low. Apple growers receive about 80 percent of their gross income by providing fresh fruit and 20 percent by providing fruit for juice, applesauce and other processed products. Without a significant improvement in the market price on sales of apples, many apple producers will not be able to remain in business.

This rule addresses that situation by providing for a new program to be administered by FSA utilizing the foregoing authority. Payments to apple operations under the program provided for by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Payments under this new program will provide those eligible for the payments with an immediate infusion of funds to help pay operating expenses and meet other financial obligations.

Producers of apples can receive a payment per pound for the higher of either 1998 or 1999 apple production from a qualifying apple operation. Producers will only be paid on a maximum quantity of 1,600,000 pounds per separate apple operation. Payments will not be subject to administrative offset or withholding, as provided by § 842 of Pub. L. 106–387.

To receive cash payments, eligible apple producers must: (1) have produced and harvested apples during the 1998 and/or 1999 crop year, (2) not have received a payment from any other Federal program, other than crop insurance, for the same market loss, and (3) apply for cash payments during the application period for each apple operation. Pub. L. 106–387, also specified that benefits under the program would not be subject, to the extent practicable, to the gross income means test and payment limitations, other than those provided in this part.

To participate in the program, eligible apple producers must: (1) self-certify to the gross pounds of production that were produced and harvested during the higher of their 1998 and 1999 crop year apple production, and (2) apply for

payments during the sign-up period set by the CCC pursuant to these regulations. At the close of the sign-up period, a national per pound payment rate will be determined based on the factoring of the available \$99.78 million divided by the total pounds of eligible apple production from each applying apple operation, with no operation exceeding 1,600,000 pounds of apple production. Because outlays for this program are a fixed amount, the national average payment rate and individual payments can only be calculated after the total eligible quantity of apple production has been determined from approved applications. Apple producers will be subject to random spot checks performed by local FSA personnel. Penalties for inaccurate certifications by producers can be easily assessed and will inhibit false reports.

Apple operations may, during the applicable period, apply in person at county FSA offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated county FSA office or obtained via the Internet. The Internet website is located at www.fsa.usda.gov/dafp/psd/.

Cost-Benefit Assessment Summary

Wool and Mohair Market Loss Assistance (MLA) Payment Program

Payments of 40 cents per pound on 2000 wool production could amount to about \$18 million, assuming wool production does not fall from 1999 levels, and could potentially double proceeds from wool production. Continuing low market prices for wool will likely further reduce wool production in 2001. However, some additional production may be stimulated in 2001 for producers who otherwise lack financing. Continued heavy textile imports likely will mean stagnant mill demand for wool. MLA payments may contribute to continued depressed prices in the future to the extent that they stimulate additional production.

Mohair producers will also receive 40 cents per pound, totaling about \$2 million. The income impact of this program on mohair producers is not as significant as it is on wool producers, since prices are much higher for mohair than for wool. Consequently, its impact on the supply/use situation for mohair should be even less than its impact on the wool situation.

Apple Market Loss Assistance Payment Program

The principal benefit of the market loss assistance program will be the approximately \$100 million in financial assistance that apple growers receive, which could determine if some of them remain in business. The per-pound payment hinges on the total eligible production reported by applicants, so FSA will be unable to calculate the final rate until around April 2001.

Using 2001 projected farm numbers, FSA's preliminary payment rate projection is about 2 cents per pound of eligible production. Payments to growers with the smallest apple acreages would be inconsequential—with those having less than an acre receiving average payments under \$20. Many of those growers will be among those whose fruit is for home use only, or certainly is not expected to provide an important part of family income.

Given the input-intensive nature of apple production, many growers may need annual loans to cover operating expenses such as labor and pesticides. However, recent poor returns may make lenders wary of assuming the risk of loaning to apple growers. This program could improve the financial position of some producers enough to allow them to acquire the loans they need to continue operating.

The Apple Market Loss Assistance Program could aid some producers on the brink of insolvency to remain in business but the effect of this program on the long-run viability of the industry will be minimal. In fact, if the program encourages overproduction it will slow structural changes needed to enhance industry viability.

List of Subjects*Part 1469*

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

Part 1470

Apple, Reporting and recordkeeping requirements.

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

PART 1469—WOOL AND MOHAIR PRICE SUPPORT PROGRAMS

1. The authority citation for part 1469 is revised to read as follows:

Authority: Pub. L. 105–277, 112 Stat. 2681; Sec. 801, Pub. L. 106–78, 113 Stat. 1135; Sec. 204(d), Pub. L. 106–224; Sec. 814, Pub. L. 106–387 (114 Stat. 1549A–55).

2. Add subpart C to part 1469 to read as follows:

Subpart C—Wool and Mohair Market Loss Assistance Program II

Sec.

- 1469.201 Applicability.
- 1469.202 Administration.
- 1469.203 Definitions.
- 1469.204 Time and method of application.
- 1469.205 Eligibility.
- 1469.206 Availability of funds.
- 1469.207 Payment rate and amount.
- 1469.208 Offsets.
- 1469.209 Appeals.
- 1469.210 Misrepresentation.
- 1469.211 Maintaining records.
- 1469.212 Estates, trust and minors.
- 1469.213 Death, incompetency, or disappearance.
- 1469.214 Refunds; joint and several liability.

Subpart C—Wool and Mohair Market Loss Assistance Program II**§ 1469.201 Applicability.**

The regulations of this subpart provide the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments directly to producers of wool, and producers of mohair, for the 2000 marketing year.

§ 1469.202 Administration.

(a) The Wool and Mohair Market Loss Assistance Program shall be administered under the general supervision of the Executive Vice President, CCC, or designee and shall be carried out in the field by State and county Farm Service Agency committees (State and county committees) and FSA employees.

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

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

- (1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and
- (2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any

determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Wool and Mohair Market Loss Assistance Program II and does not violate statutory limitations on the program.

§ 1469.203 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Wool and Mohair Market Loss Assistance Program II established by this subpart.

Application means Form CCC–1155, the Wool and Mohair Market Loss Assistance Program II Application.

Application period means March 5, 2001 through April 13, 2001.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office is the local FSA office.

Farm Service Agency or FSA means the Farm Service Agency of the United States Department of Agriculture.

Goat means an adult Angora goat or the kid of an Angora goat.

Grease mohair means mohair as it comes from the Angora goat or the kid of an Angora goat before applying any process to remove the natural oils or fats.

Grease wool means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

Hide means thick tough skin of the animal.

Lamb means a young ovine animal that has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

Marketing year means a period beginning January 1, and ending the following December 31, both dates inclusive.

Mohair means the hair sheared from a live Angora goat before applying any process that removes the natural oils or fats or produces a mohair product. Mohair does not include grease mohair shorn from pelts or hides.

Pelt means the skin of the animal with wool still attached to the skin.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens, in the United States.

Producer means any person or group of persons who as a single unit produce wool or mohair and whose production and facilities are located in the United States.

Pulled mohair means mohair obtained from the pelts or hides of dead goat.

Pulled wool means wool obtained from the pelts or hides of dead sheep.

Shorn mohair means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts, hides, or pulled mohair.

Shorn wool means grease wool sheared from live sheep or lambs. Shorn wool does not include pelts, hides, or pulled wool.

State committee is the FSA committee so designated for the applicable State.

United States means the 50 United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Wool means the hair sheared from a live sheep before applying any process that removes the natural oils or fats or produces a wool product. Wool does not include grease wool shorn from pelts or hides.

§ 1469.204 Time and method of application.

(a) Wool and mohair producers may obtain an application, Form CCC-1155 (Wool and Mohair Market Loss Assistance Program II Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of Form CCC-1155 at <http://www.sc.egov.usda.gov>

(b) A request for payments under this subpart must be submitted on a completed Form CCC-1155. Form CCC-1155 should be submitted to the FSA county office servicing the county where the producer is located but, in any case, must be received by the FSA county office by the close of business on April 13, 2001. Applications not received by the close of business on April 13, 2001, will be returned as not having been timely filed and the producer will not be eligible for payments under this program.

(c) The wool and mohair producer requesting payments under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for payments. All information provided is subject to a spot check by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program

payments. Furnishing the data is voluntary; however, without it program payments will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1469.205 Eligibility.

(a) *Producers.* To be eligible to receive a payment under this subpart, a producer must:

(1) Have produced domestic wool and/or domestic mohair during the period of January 1, 2000, through December 31, 2000.

(2) Be engaged in the business of producing and marketing agricultural products at the time of filing the application; and

(3) Apply for payment during the application period.

(b) *Eligible wool and mohair.*

(1) Wool and mohair is eligible to generate payments under this subpart only if the wool or mohair was produced by shearing live animals (not wool or mohair which is pulled or which is shorn from hides or pelts) and only if such shearing occurred in 2000 and in the United States.

(2) The producer applying for payment must have owned the wool or mohair at the time of shearing and must have owned in the United States the sheep, lambs, or goats from which the wool or mohair was shorn for 30 days or more at any time prior to shearing and actually owned the animal at the time of shearing.

§ 1469.206 Availability of funds.

The total available program funds shall be \$19.956 million as provided by section 814 of Public Law 106-387 and amended by section 1403 of Public Law 106-554.

§ 1469.207 Payment rate and amount.

(a) Benefits under this subpart may be made to producers of wool and mohair during the 2000 marketing year.

(1) *Payment rate.*

(i) The payment rate for wool is 40 cents per pound.

(ii) The payment rate for mohair is 40 cents per pound.

(2) *Payment amount.* The payment amount for wool or mohair will be calculated, after the conclusion of the sign-up period, by multiplying the certified pounds by the payment rate.

(b) In the event that approval of all eligible applications would result in expenditures in excess of the \$19.956 million appropriated, CCC will calculate payments by tabulating all eligible pounds of wool and mohair and dividing the sum by \$19.956 million to get a national payment rate per pound for wool and mohair.

§ 1469.208 Offsets.

(a) Any payment or portion thereof due any person under this subpart shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the wool, the sheep, the mohair or the angora goats thereof, or proceeds thereof, in favor of the producer or any other creditors except agencies of the U.S. Government.

(b) Any payments received by a producer are not subject to assignments, administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by section 842 of Public Law 106-387.

(c) The regulations governing offsets and withholdings found at 7 CFR Part 1403 shall not be applicable to this subpart.

§ 1469.209 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1469.210 Misrepresentation.

(a) Whoever issues a false document or otherwise acts in violation of the provisions of this program so as to enable a producer to obtain a payment to which such producer is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false document or the making of a false statement in an application for payment or other document, for the purpose of enabling the producer to obtain a payment to which such producer is not entitled, may subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1469.211 Maintaining records.

Producers making application for a payment under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the producer under this subpart.

§ 1469.212 Estates, trust, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible producer of wool or mohair shall be eligible for assistance under this subpart only if such producer meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1469.213 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a wool or mohair producer that is eligible to receive benefits in accordance with this subpart, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by CCC.

§ 1469.214 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application or this subpart, and if any refund of a payment to CCC shall otherwise become due in connection with the application or this subpart, all payments made under this subpart to any producer shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this chapter.

(b) All producers signing an application for payment as having an interest shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of any producer under this subpart if CCC determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, as of the date CCC made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous

determination was not due to any action of the producer.

(d) Interest determined in accordance with paragraph (c) of this section may not be waived on refunds required of the producer when there was intentional misaction on the part of the producer, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, part 1403 of this chapter.

(f) Producers must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any producer, the benefit must be repaid with any applicable interest.

2. Amend 7 CFR Chapter VII by adding a new part 1470 to read as follows:

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Sec.

- 1470.1 Applicability.
- 1470.2 Administration.
- 1470.3 Definitions.
- 1470.4 Time and method of application.
- 1470.5 Eligibility.
- 1470.6 Proof of production.
- 1470.7 Availability of funds.
- 1470.8 Applicant payment quantity.
- 1470.9 Payment rate and apple operation payment.
- 1470.10 Offsets.
- 1470.11 Appeals.
- 1470.12 Misrepresentation and scheme or device.
- 1470.13 Estates, trusts, and minors.
- 1470.14 Death, incompetency, or disappearance.
- 1470.15 Maintaining records.
- 1470.16 Refunds; joint and several liability.

Authority: Sec. 811, Pub. L. 106–387, 114 Stat 1549.

§ 1470.1 Applicability.

(a) The regulations in this subpart are applicable to producers of 1998 and 1999 crop of apple production. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program in accordance with section 811 of Public Law 106–387. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.2 Administration

(a) The Apple Market Loss Payment Program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by State and county Farm Service Agency committees (State and county committees) and FSA employees.

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

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

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

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

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

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the Apple Market Loss Assistance Payment program and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1470.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment program established by this subpart.

Apple Operation means any person or group of persons who as a single unit as determined by CCC, produce and market apples in the United States and which has elected to participate in the program authorized by the part.

Application means Form CCC-891, the Apple Market Loss Assistance Payment Application.

Application period means March 5, 2001 through April 13, 2001.

Commodity Credit Corporation or CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office means the local FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency or a designee.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Eligible production means apples that had been produced in the United States anytime during the 1998 and or 1999 crop year, subject to a maximum of 1,600,000 pounds per apple operation.

Higher production year means the crop year, either 1998 or 1999, as selected by the apple operation, during which apples were produced.

Payment pounds means the pounds of apples for which an operation is eligible to be paid under this subpart.

Person means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1470.4 Time and method of application.

(a) Apple producers may obtain an application, Form CCC-891 (Apple Market Loss Assistance Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC-891 at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC-891. The Form CCC-891 should be submitted to the county FSA office serving the county where the apple operation is located but, in any case, must be received by the county FSA office by the close of

business on April 13, 2001.

Applications not received by the close of business on April 13, 2001, will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in an apple operation's total production must certify on the same CCC-891 in order to obtain the maximum eligible quantity of the higher crop year of 1998 and 1999 of the apple operation before the application is complete.

(d) The apple operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1470.5 Eligibility.

(a) To be eligible to receive cash payment under this subpart, an apple operation must:

(1) Have produced apples in the United States anytime during the 1998 and/or 1999 crop year;

(2) Not have been compensated for the same market loss by any other Federal programs, except an indemnity provided under a policy or plan or insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise

contained in the application to be eligible for benefits under this subpart.

§ 1470.6 Proof of production.

(a) Apple operations selected for spot-checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced during the 1998 and/or 1999 crop year to verify the higher year of production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1998 or 1999 crop year production must be documented using actual records developed at the time of production.

(b) All persons involved in an apple operation producing apples during the 1998 or 1999 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on Form CCC-891. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, the apple operation will be determined ineligible for benefits.

§ 1470.7 Availability of funds.

The total available program funds shall be \$99.78 million as provided by Section 811 of Public Law 106-387 and amended by Section 1403 of Public Law 106-554.

§ 1470.8 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by the CCC, based on the higher production of 1998 or 1999 crop of apples that was produced by each operation, as selected by the apple operation.

(b) The maximum quantity of the 1998 or 1999 crop of apples for which producers are eligible for a payment for an operation under this subpart shall be 1,600,000 pounds.

§ 1470.9 Payment rate and apple operation payment.

(a) Payments under this subpart may be made to apple operations only up to 1,600,000 pounds of apples produced in the United States during the higher production year of 1998 or 1999. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Totalling the higher production of the eligible quantity (not to exceed 1,600,000 pounds) of apples produced from the 1998 or 1999 crop year from all approved applications; and

(2) Dividing the amount available for the Apple Market Loss Assistance Payment program by the total pounds of eligible production submitted and approved for payment (the quantity determined under paragraph (a)(1) of this section).

(b) Each apple operation payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

§ 1470.10 Offsets.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against an operation, an operation's apple production, or proceeds thereof, in favor of the producer or any other creditors, including agencies of the U.S. Government.

(b) Payments received by an apple operation under this part are not subject to administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by Public Law 106-387.

(c) The regulations governing offsets and withholdings found at 7 CFR Part 1403 shall not be applicable to this part.

§ 1470.11 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1470.12 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC

will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC, with interest together with such other sums as may become due. Any apple operation or person engaged in acts prohibited by this section and any apple operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.14 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by CCC.

§ 1470.15 Maintaining records.

Apple operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the

Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received plus interest thereon, as determined by CCC. Nothing in this section, shall, however, authorize the destruction of any records where there is an on-going dispute or where the party involved has reason to know that such records remain material to the operation of the program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

§ 1470.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this part, all payments made under this part to any apple operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if CCC determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, from the date CCC made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of CCC alone for refunds resulting from those violations determined by CCC to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(f) Any excess payments made by CCC with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed in Washington, D.C., on March 1, 2001.

Diane Sharp,

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 00F-0175]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Natamycin (Pimaricin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of natamycin on cheese. This action is in response to a petition filed by Cultor Food Science, Inc.; DSM Food Specialties; and Protein Technologies International.

DATES: This rule is effective March 8, 2001. Submit written objections and requests for a hearing by April 9, 2001. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 172.155(c), as of March 8, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-001, 202-418-3095.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 24, 2000 (65 FR 3719), FDA announced that a food additive petition (FAP 0A4704) had been filed by Cultor Food Science, Inc., 430 Saw Mill River

Rd., Ardsley, NY 10502; DSM Food Specialties, 700 American Ave., suite 300, King of Prussia, PA 19406; and Protein Technologies International, Checkerboard Square, St. Louis, MO 63164. The petitioners proposed that the food additive regulations in § 172.155 *Natamycin (pimaricin)* (21 CFR 172.155) be amended by listing only the use level of natamycin permitted in cheese and by eliminating the reference for the method of application.

Natamycin is currently approved in § 172.155 for use as an antimycotic agent on the surface of cuts and slices of cheese(s). Under the current regulation, natamycin may be applied to the surface of cuts and slices of cheese to inhibit mold spoilage with the following limitations: (1) The additive may be applied as a dry mix containing the additive and safe and suitable anticaking agents, resulting in no more than 20 parts per million (ppm) of the additive in the finished product, or by dipping or spraying, using an aqueous solution containing 200 to 300 ppm of the additive; (2) the additive may be applied to the surface of those cuts and slices of cheese(s) listed in part 133 (21 CFR part 133) only if the cheese standards provide for the use of "safe and suitable" mold-inhibiting ingredients.

The agency is revoking the limitations on the application of natamycin to the surface of cuts and slices of cheese in § 172.155(c)(1) and (c)(2), and is revising § 172.155(c) to set forth a limitation for the amount of natamycin on cheese that may remain in the finished product, regardless of the method of application.

The agency is setting forth a test method in revised § 172.155(c) that will ensure that natamycin does not exceed 20 milligrams per kilogram (20 ppm) in the finished product. This limitation will not restrict the process of application of natamycin to cheese nor the physical form (e.g., cuts, slices, or grated) of the cheese to which natamycin may be applied. The agency has concluded that the dietary exposure to natamycin will not change as a result of the use of the new test method for the application of natamycin to cheese and new physical forms of cheese to which natamycin may be applied. Further, because of the existing limitation in part 133 for when "safe and suitable" mold inhibiting ingredients, such as natamycin, may be used in cheese, the agency has determined that repeating such limitations in § 172.155 is not necessary. Therefore, omitting the previous limitation in § 172.155(c)(2) from revised § 172.155(c) does not change the varieties of cheeses in which natamycin may be used. Consequently,

because the dietary exposure to natamycin in cheese remains the same as considered in the previous safety assessment for § 172.155(c)(1) and (c)(2), no new safety issues are raised and no new safety evaluation is needed for this rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 0A4704. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 9, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch