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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1482

RIN 0551-AA60

Program to Assist U.S. Producers in Developing Domestic Markets for Value-Added Wheat Gluten and Wheat Starch Products

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Chapter XIV to establish a two-year program to assist U.S. producers to pay for certain costs incurred in developing products and markets for value-added wheat gluten and wheat starch products.

DATES: This rule is effective June 5, 2001. Comments should be received on or before July 9, 2001 to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Mark Petry, Europe, Africa, and Middle East Division, Foreign Agricultural Service, 1400 Independence Avenue SW, STOP 1024, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected between 10:00 a.m. and 4:00 p.m. at room 5514-S, 1400 Independence Avenue SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: For policy questions, contact Mark Petry, at the address above, or telephone at (202)720-1329, or e-mail at Petrym@fas.usda.gov. For program operations questions, contact Barry Klein (202)720-4647 or email at Barry.Klein@usda.gov. Persons with disabilities who require this final rule in an alternative means of communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202)720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State or local officials (See 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 under Executive Order 12988. The provisions of this rule do not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. This rule does not have retroactive effect. Administrative proceedings must be exhausted before parties may seek judicial review.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. The direct and indirect costs associated with participating in the program that are not reimbursable by the CCC to eligible producers are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program should improve small businesses' cash flow and liquidity.

Paperwork Reduction Act

CCC did not seek approval from the OMB with respect to the Paperwork Reduction Act because it has determined that no more than three entities are eligible to participate in the program established by this rule.

Background

Temporary Safeguard Measure

In March 1998, the U.S. International Trade Commission (ITC) transmitted to the President a unanimous affirmative determination that wheat gluten was being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic wheat gluten industry. The President imposed a quota on wheat gluten imports from June 1, 1998 through June 1, 2001 as a safeguard relief measure pursuant to section 203 of the Trade Act of 1974. In November 2000, the U.S. wheat gluten industry filed a request with the ITC for a two-year extension of the import quota to June 1, 2003. On April 2, 2001, the ITC determined that action under section 203 continued to be necessary to prevent or remedy serious injury and there was evidence that the domestic wheat gluten producers were making a positive adjustment to import competition. This rule assists the U.S. wheat gluten industry in completing the process of adjustment to import competition by developing value-added products.

Authority

Among other activities, the Commodity Credit Corporation Charter Act (15 USC 714c) authorizes the Commodity Credit Corporation (CCC) to use its general powers to increase domestic consumption of agricultural commodities by aiding in the expansion of domestic markets or by aiding in the development of new and additional markets, marketing facilities, and uses for such commodities. This rule will use CCC funds for the purpose of increasing domestic consumption of value-added products made from wheat gluten and wheat starch and developing new and additional markets, marketing facilities and uses for these products.

Interim Rule

Because the section 201 import quota expires June 1, 2001, it has been determined that this interim rule will be effective upon filing at the **Federal Register**. This action is intended to help the U.S. wheat gluten industry to adjust more quickly to increased import competition that is expected to occur immediately upon the quota's expiration.

The rule provides for a two-year program to assist U.S. wheat gluten producers in fully adjusting to import competition by transitioning the industry from production of basic bulk commodities to production of value-added commodities where the market potential is more viable. U.S. producers of wheat gluten, who meet the eligibility requirements of the rule and submit the required market development plans, will receive an annual lump sum payment by CCC to conduct specific program activities aimed at facilitating the transition to value-added wheat gluten products for sale in the domestic market.

The Department invites comments on all aspects of this rule including: eligibility criteria; contents and requirements of the adjustment plan; sufficiency of the program in assisting adjustment to import competition; relevance to the adjustment plans previously submitted to the ITC; and strength of requirements with respect to ensuring proper usage of program funds.

List of Subjects in 7 CFR Part 1482

Agricultural commodities, production, reporting and record keeping requirements, wheat.

Interim Rule

Accordingly, the regulations at 7 CFR Chapter XIV are amended by adding a new part 1482 to Subchapter B as follows:

PART 1482—VALUE-ADDED WHEAT GLUTEN AND WHEAT STARCH PRODUCT MARKET DEVELOPMENT PROGRAM

Sec.

- 1482.1 Applicability.
- 1482.2 Administration.
- 1482.3 Definitions.
- 1482.4 Eligibility.
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- 1482.7 Reports.
- 1482.8 Payment.
- 1482.9 Debarment and Suspension.
- 1482.10 Misrepresentation and scheme or device.
- 1482.11 Appeals.
- 1482.12 Expiration.

Authority: 15 USC 714c.

§ 1482.1 Applicability.

(a) This program is applicable until June 5, 2003. This program sets forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to U.S. producers participating in the Value-Added Wheat Gluten and Wheat Starch Product Market Development Program for the costs of conducting specific market development activities incurred

in the United States with respect to U.S. production of wheat gluten.

(b) Payments shall be made only for wheat gluten and wheat starch products produced or advanced in value in the United States.

§ 1482.2 Administration.

(a) The Value-Added Wheat Gluten and Wheat Starch Product Market Development Program shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by the Deputy Administrator, Commodity Operations, Farm Service Agency (FSA).

(b) The Executive Vice-President, CCC, or the Deputy Administrator, FSA, or a designee, may waive or modify deadlines and other program requirements in cases where lateness or failure to meet other requirements does not adversely affect the operation of the Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

§ 1482.3 Definitions.

The definitions set forth in this section shall be applicable for purposes of administering the Value-Added Wheat Gluten and Wheat Starch Product Market Development Program.

(a) *Adjustment Plan* means a defined program of activities aimed at improving the economic viability of producers of value-added wheat gluten or wheat starch products.

(b) *Agency* means the Farm Service Agency (FSA).

(c) *Agreement* means the Value-Added Wheat Gluten and Wheat Starch Product Market Development Program Application and Contract.

(d) *Modified wheat gluten or modified wheat starch* means any processed product derived from vital wheat gluten or wheat starch that has been obtained through refining or processing that adds value to the basic product.

(e) *Value-Added* means changes in vital wheat gluten or wheat starch that result in a further processed product having a higher market value than the vital wheat gluten or wheat starch.

(f) *Wheat gluten producer* means agricultural processors, including producer-owned corporations, that produce vital wheat gluten.

§ 1482.4 Eligibility.

(a) To be eligible to receive payments, a wheat gluten producer must:

(1) Have produced in the United States not less than 1,000,000 pounds of vital wheat gluten from July 1, 1998 through June 30, 2000.

(2) Have been engaged in the business of producing and marketing vital wheat

gluten or modified wheat gluten from July 1, 1998 through June 30, 2000.

(3) Have reported specific adjustment efforts as part of the 1998 adjustment plan submitted by the Wheat Gluten Industry Council to the International Trade Commission in Investigation Number TA-201-67.

(4) Submit a timely application and comply with the terms and conditions of the program and instructions issued by CCC and FSA.

b. [Reserved]

§ 1482.5 Application.

(a) To receive payments, eligible producers must submit an application within the application period announced by CCC. The application must include the following:

(1) Name of the applicant and name of firm, if applicable;

(2) Address of the applicant and firm;

(3) Name of agent for service of process;

(4) Telephone and fax numbers for the applicant and firm;

(5) Internal Revenue Service tax identification number under which the applicant is conducting business;

(6) Bank account number for electronic submission of funds (optional)

(7) Quantity of vital wheat gluten produced from July 1, 1998 through June 30, 2000;

(8) Submission of information in paragraph (b) of this section.

(9) Information as to the applicant's eligibility under § 1482.4

(b) Eligible producers must submit a proposal for a Value-Added Wheat Gluten and Wheat Starch Product Market Development Program Agreement. The proposal must include the following information:

(1) Nature of the adjustment plan through production development and market activities;

(2) Specific listing of activities and estimated costs;

(3) Goals for completion during the two-year program.

§ 1482.6 Costs.

(a) Costs of market development activities set forth in an applicant's Agreement for which CCC funds may be used to pay include, but are not limited to, the following:

(1) The cost of producing and distributing advertising material;

(2) The cost of product reformulation and testing;

(3) The cost of developing and expanding uses for existing value-added products;

(4) The cost of product demonstrations;

- (5) Participation fees for retail and trade exhibitions and shows;
- (6) The cost of educational training;
- (7) The cost of food service promotions;

(8) Salaries associated with contractors and employees engaged in the above activities; and

(9) Capital costs relating to expanding production of modified wheat gluten or modified wheat starch for value-added products.

(b) Costs that may not be paid using CCC funds are:

(1) Fees paid for helping to prepare the application for program benefits;

(2) Political fund raising activities; and

(3) Costs that CCC determines are not consistent with the intent of the program.

§ 1482.7 Reports.

(a) A producer submitting an application must maintain accurate records and accounts that will document that all eligibility requirements under this Part and other requirements as may be determined by CCC are met. Such records and accounts must be retained for three years after the date of payment to the wheat gluten or wheat starch producer under this program. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, U.S. 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 with interest thereon, as determined by CCC.

(b) Producers participating in the Value-Added Wheat Gluten and Wheat Starch Product Market Development Program must submit a quarterly report listing completion of activities and costs incurred under the program.

(c) Participating producers must also submit a project performance report 60 days after the end of the first year of the program and 60 days after the end of the second year of the program. The report should explain the activities undertaken to adjust to import competition that were included in the Agreement. CCC will review the report following the first program year. If a participating producer has not made significant progress in completing the stated activities in the first program year as determined by CCC, CCC may cancel the producer's eligibility for the second program year, and CCC may require the producer to refund with interest all or some of the funds received from CCC. If a participating producer has not made significant progress in completing the

stated activities in the second program year as determined by CCC, CCC may require the producer to refund with interest some or all of the funds received from CCC in the second year of the program.

§ 1482.8 Payment.

(a) The total amount of CCC funds available to eligible producers for the first year of this program is \$27 million and the total amount available for the second (final) year of this program is \$13 million.

(b) The maximum payment rate to an applicant will be based on an applicant's average annual production of vital wheat gluten from July 1, 1998 through June 30, 2000 relative to the total average annual U.S. production of vital wheat gluten of all eligible applicants.

(c) After receipt and approval of an eligible producer's application and proposal, CCC will issue payment for the first program year to the applicant. Upon satisfactory completion of the activities included in the producer's Agreement for the first program year, as determined by CCC after receipt of the report required in § 1482.7 (c), CCC will issue payment for the second program year to the producer.

§ 1482.9 Debarment and suspension.

The Government-wide debarment and suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, Subparts A through E, apply to this Part.

§ 1482.10 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this Part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Interest charged under this part shall accrue at the rate of interest which the United States Treasury charges CCC for funds. Such interest shall accrue from the date CCC made such funds available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and/or damages if CCC determines that the cause of the erroneous determination was not due to any action of the producer.

(e) Any producer or person engaged in an act prohibited by this Part and any producer or person receiving payment under this Part, in part because of such act, shall be jointly and individually liable for any refund due under this Part and for related charges.

(f) The remedies provided in this Part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(g) Other limitations may apply.

§ 1482.11 Appeals.

(a) Any producer who is subject to an adverse determination made under this Part shall have a right to appeal the determination by filing a written request with the Deputy Administrator of the Farm Service Agency at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250-0550.

(b) Any producer who believes that it has been adversely affected by a determination under this Part must seek review with the Deputy Administrator within thirty days of such determination, unless provided with notice by CCC which provides a different time for appealing.

(c) Any producer who believes that it has been adversely affected by a determination by the Agency must seek review with the Deputy Administrator before any other review may be requested by a court of competent jurisdiction.

§ 1482.12 Expiration.

This program will expire June 5, 2003. The program shall not be extended.

Signed at Washington, D.C. on June 4, 2001.

J.B. Penn,

President, Commodity Credit Corporation.

[FR Doc. 01-14431 Filed 6-5-01; 10:16 am]

BILLING CODE 3410-10-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245-AE74

Surety Bond Guarantee Program

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.