

litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies, and sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii.

(ii) \* \* \* To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector, and untreated sweetpotato from Hawaii must be inspected in Hawaii and found to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector.

\* \* \* \* \*

#### **§ 318.30 [Amended]**

■ 3. In § 318.30, paragraph (c) is amended by adding the words “the irradiation of such sweetpotatoes in accordance with § 318.13–4f or upon” immediately before the words “the fumigation of such sweetpotatoes in Hawaii”.

Done in Washington, DC, this 23rd day of June 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–16182 Filed 6–25–03; 8:45 am]

**BILLING CODE 3410–34–P**

## **DEPARTMENT OF AGRICULTURE**

### **Commodity Credit Corporation**

**7 CFR 1412, 1421, 1439, 1480**

**RIN 0560–AG95**

#### **2003 Agricultural Assistance Act—Crop Disaster Program and Livestock Assistance Program**

**AGENCIES:** Commodity Credit Corporation, Farm Service Agency, USDA.

**ACTION:** Final Rule.

**SUMMARY:** This rule implements portions of the Agricultural Assistance Act of 2003 to provide crop-loss disaster assistance for producers who suffered 2001 or 2002 crop losses and to establish a Livestock Assistance Program. This rule also implements

provisions of the Consolidated Appropriations Resolution, 2003 (2003 Appropriations Act) that add the commodities crambe and sesame seed to the list of commodities eligible for CCC direct and counter-cyclical payments and marketing assistance loans and that provide that popcorn planted acreage is to be considered corn for determining corn crop acreage bases and yields. Other provisions of these Acts will be implemented under separate rules.

**EFFECTIVE DATE:** June 23, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

*Crop disaster:* Eloise Taylor, (202)720–9882, or *Eloise\_Taylor@wdc.usda.gov*.

*Livestock Assistance Program and Direct and Counter Cyclical Payment Program:* Lynn Tjeerdsma, 202–720–6602, e-mail:

*lynn\_tjeerdsma@wdc.usda.gov*.

*Oilseeds:* Raellen Erickson at (202) 720–6689, or via electronic mail at *Raellen\_Erickson@wdc.usda.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **Notice and Comment**

Section 217(b) of the Agricultural Assistance Act of 2003 requires that the regulations to implement it shall be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, or the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). The crop disaster program and livestock assistance program are covered by section 765(c) of the 2003 Act. The 2003 Act did not provide a similar requirement for the addition of crambe and sesame seed to the oilseeds eligible for CCC direct and counter-cyclical payments and market assistance loans. However, the 2003 Act amended the Farm Security and Rural Investment Act of 2002 (the 2002 Act) to require those crops' inclusion and section 1601 of the 2002 Act provides the exemption. Thus, this rule is published as final.

##### **Executive Order 12866**

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

##### **Federal Assistance Programs**

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance:

10.051—Commodity Loans and Loan Deficiency Payments.

10.066—Livestock Assistance Program.

10.073—Crop Disaster Program.

##### **Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because the agencies are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

##### **Environmental Assessment**

The environmental impacts of this rule have been considered in accordance with the provisions of the national Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC and FSA have concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

##### **Executive Order 12778**

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

##### **Executive Order 12372**

This program is not subject to Executive Order 12372, which requires 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).

##### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

**Small Business Regulatory Enforcement Fairness Act of 1996**

Section 765(c) of the 2003 Act and section 1601 of the 2002 Act require CCC, in promulgating the regulations and administering the programs of the Act, to use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), to forgo the usual 60-day delay in the effective date of major final rules required by SBREFA (5 U.S.C. 801(a)(3)(A)(ii)) for Congressional review. This rule affects a number of agricultural producers who are in urgent need of the payments to be provided under it. Thus, in accordance with 5 U.S.C. 808(2), CCC has determined that delay is contrary to public interest and this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register**.

**Paperwork Reduction Act**

Section 765(c) of the Agricultural Assistance Act of 2003 and section 1601 of the 2002 Act require that these regulations be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public do not have to be approved by the Office of Management and Budget or be subject to the 60-day public comment period required by 5 CFR 1320.8(d)(1).

**Government Paperwork Elimination Act**

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the programs covered under this rule are not yet fully implemented for the public to conduct business with FSA electronically. Although applications for all programs may be submitted at the FSA county offices by mail or FAX, electronic submission is not available. Still, implementation of electronic submission and receipt is underway.

**Background***Addition of Crambe and Sesame as Eligible Oilseeds*

Section 763, Division A of the 2003 Act amended sections 1001 and 1202 of the 2002 Act to add crambe and sesame seed to the list of oilseeds eligible for direct and counter-cyclical payments and marketing assistance loans. The 2002 Act did not specifically include crambe and sesame seed but it did provide the Secretary the authority to include additional oilseeds in these programs. Crambe and sesame seed were not included initially but will be included now as required by the 2003 Act.

*Popcorn Acreage as Eligible Corn Acreage*

This rule allows producers with a farm with acreage planted to, or prevented from being planted to, popcorn in any year from 1998 through 2001 to have popcorn acreage considered as regular corn acreage for the purposes of establishing corn base acres on the farm. Section 767 of the 2003 Act requires this change. It also provides that a farm program payment yield established before adding popcorn acreage shall be the same yield as established for corn. If the yields are not established for corn before adding popcorn acreage, the corn yield to be attributed to popcorn acreage shall be the Direct and Counter Cyclical Program (DCP) corn yield for similar farms. This change is effective fewer than 60 days before the deadline for producers to establish base acres for all covered commodities on a farm. Therefore, this rule extends this deadline for popcorn farms to July 28, 2003. Applicable direct and counter-cyclical payments for corn base acres added to a farm under this rule will be paid after October 1, 2003.

*2002 Livestock Assistance Program (2002 LAP)*

Section 203(b) of the Agricultural Assistance Act of 2003 requires the Secretary of Agriculture to use \$250 million to pay livestock producers for losses in a disaster county in either of calendar years 2001 or 2002, but not both. The program will use the same basic criteria established for the 1999 Livestock Assistance Program (1999 LAP) except that, in lieu of the maximum gross revenue eligibility limitation used for the 1999 LAP, the Secretary shall use the adjusted gross income limitation contained in section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308-3a).

Livestock producers who suffered livestock feed losses as a result of

natural disaster may apply for compensation for losses incurred in calendar year 2001 or 2002. If the livestock operation is in a county declared to be a disaster county for both calendar year 2001 and calendar year 2002, the producers must elect the year for which they wish to receive LAP payments. An operation may receive 2002 LAP for losses in either one of the affected calendar years, but not both. If the livestock operation is in a county that was declared to be a disaster county in just one of those calendar years, the producers may elect to receive payments for losses in either calendar year, but not both. Benefits will be provided to eligible livestock producers only in those counties declared under a Secretarial or Presidential disaster declaration and that meet LAP eligibility requirements and are subsequently approved for participation in LAP. A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the selected calendar year as a result of damage due to a natural disaster in order to be eligible. Livestock producers in counties contiguous to an approved county are not eligible. A livestock producer in an approved county must have suffered at least a 40-percent loss of normal grazing for the producer's eligible livestock for a minimum of 3 consecutive months. Losses will be compensable only up to 80 percent of the total grazing available and the compensable loss may not exceed the county maximum set by the local FSA county committee.

Payments will be made according to a formula and will be subject to funding and other limitations, including a \$40,000 per person payment limitation. In the event that the total amount of claims submitted under this subpart exceeds the \$250 million available for 2002 LAP, each payment shall be reduced by a uniform national percentage. The amount of assistance that producers would otherwise receive under 2002 LAP shall be reduced by the assistance producers receive under the 2002 Cattle Feed Program announced on September 3, 2002, the 2002 Livestock Compensation Program announced on October 10, 2002, and the Livestock Compensation Program II announced on May 5, 2003.

*Disaster Assistance to Crop Producers*

The 2003 Act authorizes the Secretary to provide assistance to crop producers for losses due to damaging weather and related conditions in 2001 or 2002 crops. Generally, the statute requires the Crop Disaster Program (CDP) program to be administered using similar requirements as used for 2000-crop

losses under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2001 (2001 Act) (Public Law 106-387). Special approved yields based on actual production are prohibited unless production reports were submitted before enactment of the 2003 Act. The statute provides that total assistance under the CDP, crop insurance program and Noninsured Crop Disaster Assistance Program (NAP), plus the value of the crop that was not lost, may not exceed 95 percent of the value of the crop had there been no loss.

The loss thresholds used with respect to the 2000 program are applicable to insured, uninsured and non-insurable 2001 or 2002 crops. For uninsured crops for which 2001 or 2002 CDP assistance is requested, applicants must purchase crop insurance coverage at a level greater than the level available under catastrophic risk protection, if available, for 2003 and 2004 crop years. Also, for 2001 or 2002 CDP benefits for a non-insurable crop for which NAP coverage was not obtained, the producer must submit required documents and pay the administrative fee for 2003 and 2004 for such crops. However, if the sales closing date for purchasing NAP or crop insurance has passed, a producer must meet the linkage requirements for the two subsequent years. Producers who do not purchase crop insurance or NAP as required will be required to refund assistance received, plus interest. Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator.

False certifications by producers carry strict penalties and FSA will validate applications with random spot-checks. Like earlier programs, gross revenue and per-person payment limits apply. A "person" may receive no more than \$80,000 in Crop Disaster payments, nor receive benefits if their gross revenue exceeds \$2.5 million in the tax year preceding the year for which benefits are requested. The 1997 Census of Agriculture indicates that less than 2.4 percent of the farms in the U.S. have sales greater than \$500,000, and farms with gross incomes of \$2.5 million or more only represent a small fraction of one percent. Thus, the gross revenue limitation only limits eligibility of the nation's largest farm and ranch operations.

#### *Corrections to Direct and Counter-cyclical Program regulations*

This rule makes corrections to 7 CFR part 1412 where the need has become evident since this program was begun in October 2002. First, section 1412.401 is

revised to provide that payments may be issued to a successor to a contract only after payments issued to the predecessor are refunded to CCC, or a debt for any amount not refunded to CCC has been established. Before, in such cases, payments could be issued to the successor only after payments were refunded. Second, in section 1412.407(e), the names of two county names that were misspelled are corrected. Third, section 1412.408 is added to provide for redistribution of base acreage under certain circumstances. And finally, section 1412.703 is revised to delete an incorrect cross reference.

#### *Cost-Benefit Analysis Summary*

**Crop disaster:** General payments for insured and non-insurable crops will be made at 50 percent of market price, and uninsured crops will be made at 45 percent of market price. Payments for insured crops will be made at the slightly higher rate to provide an incentive to purchase crop insurance. Payments for non-insurable crops will be made at the higher rate because insurance is not available for these crops. Claims for losses under the 1999- and 2000-crop disaster programs were about \$1.7 billion and 1.9 billion, respectively, before pro-rationing. Based on similar weather conditions, crop losses under the 2001 or 2002 program are expected to be about \$2 billion. The \$80,000 payment limitation and the limitation of \$2.5 million gross income will distribute payments more toward relatively smaller farms. Nonetheless, large farms would account for a disproportionate share of crop-loss payments if there was no income limitation.

**2002 Livestock Assistance Program (LAP 2002):** It is estimated that over 31 million head of cattle, 3 million horses, and 2 million sheep are located within the affected states. The potential cost of the LAP 2002 before application of a national factor is estimated to be about \$750 million. Because projected claims exceed the \$250 million expected to be available for the program, each producer's payment will be prorated based on the ratio of the maximum allowed benefits to total claims. Payments will assist producers affected by disasters in meeting their financial obligations for income lost due to poor grazing conditions. It is assumed, in part as a result of the LAP, that producers affected by the disaster will remain in business. The impact of the payments on livestock prices and feed prices is expected to be small. For those producers who actually suffered the losses, the impact on their equity and

cash flow positions is significant. In the absence of this program, some producers would have been forced to liquidate their herds, increasing livestock supplies and lowering prices in the short term. Changes are likely to be small and temporary. The projected impact on consumers is negligible. Aggregate farm income in 2002 is expected to be about \$250 million higher.

**Loan Rate Changes:** The 2003 Act mandates that the same loan rate be set for each kind of other oilseed. This single loan rate must be \$0.0960 per pound for the 2003 crop of each type of oilseed and \$0.0930 per pound for the 2004 through 2007 crops of each type of oilseeds. Under the 2003 Act, loan rates increase for oil-type sunseed, rapeseed, canola, and flaxseed, but decrease for other-type sunseed mustard seed, and safflower compared with the differentiated loan rates. CCC outlays for 2002 Act other oilseeds is expected to increase \$20 million on average for the 2003 through 2007 crops as a result of the mandated single loan rate. Outlays for oil-type sunseed, other-type sunseed, canola, flaxseed, and rapeseed are expected to increase \$22 million on average. The outlay increases will be partially offset by lower outlays for safflower and mustard seed compared with loan rates under the 2002 Farm Act, reducing CCC outlays by \$1.9 million.

**Adding Crambe and Sesame Seed to the List of Other Oilseeds:** Annual crambe direct payments for the 2003 through 2007 crops are projected at \$216,000, for a total \$1.1 million over the 5-year period. Annual sesame seed direct payments are projected at \$35,000, for a total of \$175,000 for the remaining 5 years of the 2002 Act. No counter-cyclical payments are projected for crambe or sesame. Crambe is expected to generate loan program outlays of \$166,000 during the 2003 and 2004 crop years. Sesame is not projected to generate any loan program outlays.

**Treatment of Popcorn:** It is estimated that direct and counter cyclical payments will increase \$69 million for crop years 2002-2007 because corn payment acres will increase an estimated 239,000 acres. Outlays for the changes made by this rule are projected to be as follows.

#### SUMMARY OF OUTLAYS

Program	Outlays (\$ Million)
2002 Livestock Assistance Program (2002 LAP) .....	250
Crop Disaster Program .....	2,000

## SUMMARY OF OUTLAYS—Continued

Program	Outlays (\$ Million)
Crambe and sesame seed eligi- bility .....	1.4
Loan Rate Changes .....	210
Treatment of Popcorn .....	69
Total .....	2,530

## List of Subjects

## 7 CFR Part 1412

Direct and counter-cyclical payments, Grains, Peanuts, Oilseeds, Reporting and recordkeeping requirements.

## 7 CFR part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs.

## 7 CFR part 1439

Animal feeds, Disaster assistance, Livestock, Pasture, Reporting and recordkeeping requirements.

## 7 CFR Part 1480

Agricultural commodities, Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Title 7, Chapter XIV, of the Code of Federal Regulations is amended as set forth below.

## PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

■ 1. The authority citation for part 1412 continues to read as follows:

**Authority:** 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

■ 2. Revise § 1412.101 to read as follows:

## § 1412.101 Applicability.

This part governs:

(a) How crop acreage bases and farm program payment yields are established or updated by owners of a farm for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, peanuts, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds, as determined and announced by the Commodity Credit Corporation (CCC), for the years 2002 through 2007;

(b) The month in which producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) contracts with CCC for each of the years 2002 through 2007;

(c) The month in which peanut producers may establish such bases and yields in order to receive 2002 direct and counter-cyclical payments; and

(d) The month in which peanut producers may assign such bases and yields to a farm for each of the years 2003 through 2007.

■ 3. Amend § 1412.103 by revising the definitions of “Covered commodity” and “Other oilseeds” to read as follows:

## § 1412.103 Definitions.

\* \* \* \* \*

*Covered commodity* means wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as determined by the Secretary.

\* \* \* \* \*

*Other oilseeds* means a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or, if determined and announced by CCC, another oilseed.

\* \* \* \* \*

■ 4. Amend § 1412.201 by adding paragraph (f) to read as follows:

## § 1412.201 Election of base acres.

\* \* \* \* \*

(f) For the purposes of this section, acreage planted, or prevented from being planted, to popcorn shall be considered as acreage planted to corn.

■ 5. Amend § 1412.301 by adding paragraph (b) to read as follows:

## § 1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.

\* \* \* \* \*

(b) For the purposes of this section popcorn shall be considered as corn.

■ 6. Amend § 1412.401 by revising paragraph (d) to read as follows:

## § 1412.401 Direct and counter-cyclical program contract.

\* \* \* \* \*

(d) A transfer or change in the interest of a producer in base acres on the farm subject to a contract shall result in the termination of the contract with respect to such interest, and a refund of applicable direct and counter-cyclical payments issued for the farm. The contract termination shall be effective on the date of the transfer or change. Successors-in-interest on a farm subject to a contract may assume all obligations under the contract no later than September 30 of the contract year, and receive payment under the contract only after applicable direct and counter-cyclical payments previously issued to the predecessor for the farm have been

refunded to CCC, or a debt for any amount not refunded to CCC has been established for the predecessor.

\* \* \* \* \*

■ 7. Amend § 1412.406 by revising paragraph (e)(1) to read as follows:

## § 1412.406 Succession-in-interest to a direct and counter-cyclical program contract.

\* \* \* \* \*

(e)(1) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment shall not be paid to the successor unless payment has been refunded by the predecessor, or a debt for any amount not refunded to CCC has been established for the predecessor.

\* \* \* \* \*

■ 8. In § 1412.407(e), revise the counties listed under Mississippi to read as follows:

## § 1412.407 Planting flexibility.

\* \* \* \* \*

Mississippi

Calhoun, Carroll, Coahoma, Covington, DeSoto, George, Humphreys, Jefferson Davis, Lowndes, Madison, Marshall, Monroe, Montgomery, Prentiss and Rankin.

\* \* \* \* \*

■ 9. Add § 1412.408 to read as follows:

## § 1412.408 Redistributing base acreage.

(a)(1) Subject to the limitation in paragraph (a)(3) of this section, the redistribution of a farm's base acreage shall be allowed when all owners of the farm execute and submit a written request on a CCC-approved form for such redistribution to the FSA county office where the records for the farm are administratively maintained.

(2) If the land of the farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the redistribution of base acreage.

(3) Redistribution of a farm's base acreage to negate or reduce a program violation is prohibited.

■ 10. Amend § 1412.703 by revising paragraph (f) to read as follows:

## § 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

\* \* \* \* \*

(f) The total number of acres assigned by historic peanut producers under paragraph (b) of this section to a farm shall be considered to be the farm's base acres for peanuts for the purpose of making direct payments and counter-cyclical payments under this part, beginning with crop year 2003.

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

■ 11. The authority citation for part 1421 continues to read as follows:

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

■ 12. Amend § 1421.3 by revising the definition of “Oilseeds” to read as follows:

**§ 1421.3 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

**PART 1439—EMERGENCY LIVESTOCK ASSISTANCE**

■ 13. The authority citation for part 1439 is revised to read as follows:

**Authority:** 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec. 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114 Stat. 358; Secs. 802, 806, & 813; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 108–7, 117 Stat. 11.

**Subpart B—Livestock Assistance Program**

■ 14. Subpart B is revised to read as follows:

**Subpart B—Livestock Assistance Program**

Sec.	
1439.100	Administration.
1439.101	Applicability.
1439.102	Definitions.
1439.103	Application process.
1439.104	County committee determinations of general applicability.
1439.105	Loss criteria.
1439.106	Livestock producer eligibility.
1439.107	Calculation of assistance.
1439.108	Availability of funds.
1439.109	Financial considerations.
1439.110	Appeals.
1439.111	Refunds to CCC; joint and several liability.
1439.112	Miscellaneous.

**Subpart B—Livestock Assistance Program**

**§ 1439.100 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity

Credit Corporation (CCC), and the Deputy Administrator, for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees.

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

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

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

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the 2002 Livestock Assistance Program (2002 LAP) is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

**§ 1439.101 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the 2002 LAP authorized by Public Law 108–7. Program regulations for prior livestock assistance programs can be found at 7 CFR part 1439 as it was published in 7 CFR chapet XIV revised as of January 1, 2001. Benefits will be provided to eligible livestock producers in the United States under this subpart in declared disaster counties that were subsequently approved for relief under this part by the Deputy Administrator.

(b) During the 2001 or 2002 calendar years, for 2002 LAP, a producer must be in a disaster county that was also approved and determined by the Deputy Administrator as having suffered losses during calendar year 2001 or 2002. Contiguous counties that were not designated as a disaster county in their own right will not be eligible for participation in 2002 LAP under this subpart. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover

and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(c) To be eligible for assistance under this subpart, a livestock producer's pastures must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

**§ 1439.102 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart, in which case the definitions in this section will apply.

*Application* means the Livestock Assistance Program Application. The Application is available at county FSA offices.

*Disaster county* means a county included in the geographic area covered by a qualifying natural disaster declaration for calendar year 2001 or calendar year 2002 for which the request for such declaration was submitted during the period beginning on January 1, 2001, and ending February 20, 2003, and subsequently approved. The term disaster county means the county where the disaster occurred and does not include a contiguous county.

*Qualifying natural disaster declaration* means:

(1) A natural disaster declared by the Secretary under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

**§ 1439.103 Application process.**

(a) Livestock producers must submit a completed application prior to the close of business on the date established and announced by the Deputy Administrator. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information that CCC determines to be necessary to determine the livestock producer's eligibility.

**§ 1439.104 County committee determinations of general applicability.**

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during calendar year 2001 for 2001 eligibility and during calendar year 2002 for 2002 eligibility. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Drought Monitor; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county-wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State committee concurrence, to the Deputy Administrator. The maximum grazing losses the county committees shall submit is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called "eligible counties."

(b) In each eligible county, the county committee shall determine an LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine

normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 2001 or 2002, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

**§ 1439.105 Loss criteria.**

(a) Grazing land for which a livestock producer requests benefits must be within the physical boundary of a disaster county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall specify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of

grazing loss for the county as determined by the county committee in accordance with § 1439.104(a).

Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

**§ 1439.106 Livestock producer eligibility.**

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners, cash lessees, or share lessees of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner, or cash or share lessee of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased or being purchased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned or leased for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

**§ 1439.107 Calculation of assistance.**

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture, and multiplying the result by:

(2) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(3) the daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The applicable number of days in the LAP payment period; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) or (c) of this section and from the final payment amount shall be subtracted the sum of the amounts received by the producer under the Livestock Compensation Program, as published in the **Federal Register** on October 10, 2002 (67 FR 63070), and the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260). The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to subtracting the amounts received by the producer under the Livestock Compensation Program, as published in the **Federal Register** on October 10, 2002 (67 FR 63070), the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260), and the Livestock Compensation

Program II, as published on May 5, 2003 (68 FR 23688).

(e) The final payment calculated in paragraph (d) of this section shall be multiplied by the national factor if required under § 1439.108.

(f) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(g) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

#### **§ 1439.108 Availability of funds.**

In the event that the total amount of claims submitted under this subpart exceed \$250 million, each payment shall be reduced by a uniform national percentage. Such payment reductions shall be made after the imposition of applicable payment limitation provisions.

#### **§ 1439.109 Financial considerations.**

The provisions of §§ 1439.10 and 1439.11 apply to 2002 LAP.

#### **§ 1439.110 Appeals.**

Determinations made under this subpart are subject to reconsideration or appeal in accordance with parts 780 and 11 of this title.

#### **§ 1439.111 Refunds to CCC; joint and several liability.**

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

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were

provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. 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 livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, 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) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

#### **§ 1439.112 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, CCC may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to, provisions concerning misrepresentations, payment limitations, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this Title relating to payments in event of death, the handling of claims, and other matters



may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) In no instance may the amount expended under this subpart exceed \$250 million.

(h) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

(i) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(j) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by July 10, 2003 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(k) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of livestock and grazing for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(l) A person shall be ineligible to receive assistance under 2002 LAP and be subject to such other remedies as may be allowed by law, if, with respect to the 2002 LAP, it is determined by the State committee or the county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

■ 15. Part 1480 is revised to read as follows:

#### **PART 1480—2001 AND 2002-CROP DISASTER PROGRAM**

Sec.

- 1480.1 Applicability.
- 1480.2 Administration.
- 1480.3 Definitions.
- 1480.4 Producer eligibility.
- 1480.5 Time for filing application.
- 1480.6 Limitations on payments and other benefits.
- 1480.7 Requirement to purchase crop insurance and non-insurable coverage.
- 1480.8 Miscellaneous provisions.
- 1480.9 Matters of general applicability.
- 1480.10 Eligible disaster conditions.
- 1480.11 Qualifying 2001 or 2002-crop losses.
- 1480.12 Rates and yields; calculating payments.
- 1480.13 Production losses, producer responsibility.
- 1480.14 Determination of production.
- 1480.15 Calculation of acreage for crop losses other than prevented planted.
- 1480.16 Calculation of prevented planted acreage.
- 1480.17 Quantity adjustments for diminished quality for certain crops.
- 1480.18 Value loss crops.
- 1480.19 Other provisions for specialty crops.
- 1480.20 Misrepresentation and scheme or device.
- 1480.21 Offsets, assignments, and debt settlement.
- 1480.22 Compliance with highly erodible land and wetland conservation provisions.

**Authority:** Pub. L. 106–387, 114 Stat: 1549, Pub. L. 108–7 117 Stat. 11 (15 U.S.C. 714 et seq.).

##### **§ 1480.1 Applicability.**

This part sets forth the terms and conditions of the 2001 and 2002-Crop Disaster Program (CDP). The CDP makes disaster payments to producers who have incurred losses in quantity or quality to eligible 2001 or 2002 crops due to disasters as determined by the Commodity Credit Corporation (CCC) under the Agricultural Assistance Act of 2003 (Pub. L. 108–007).

##### **§ 1480.2 Administration.**

(a) The program will be administered under the general supervision of the executive Vice President, CCC, and shall be carried out in the field by Farm Service Agency (FSA) State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee shall take any action required by this part that has not been taken by an county committee. The State committee shall also:

(1) Correct or require an county committee to correct any action taken by such FSA county committee that is not in accordance with this part; and

(2) Require an county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No delegation in this part to an State or county committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by an State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

##### **§ 1480.3 Definitions.**

The definitions in this section apply to all determinations made under this part. The terms defined in part 718 of this title and 1400 and 1437 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section. The definitions follow:

*Actual production* means the total quantity of the crop appraised, harvested or that could have been harvested as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator.

*Additional coverage* means a plan of crop insurance coverage providing a level of coverage greater than the level available under catastrophic risk protection.

*Administrative fee* means an amount the producer must pay for NAP for non-insurable crops.

*Appraised production* means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but which was determined to reflect the crop's yield potential at the time of appraisal.

*Approved yield* means the amount of production per acre, computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee. For crops covered under the Noninsured Crop Disaster Assistance program, the approved yield is established according to part 1437 of



this chapter. Only the approved yields based on production evidence submitted to FSA prior to the 2003 Act will be used for purposes of the 2001 or 2002 CDP. Other yields may be assigned when an eligible approved yield is not available.

*Aquaculture* means the reproduction and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

*Aquaculture facility* means any land or structure including, but not limited to, a laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

*Aquacultural species* means any aquacultural species as defined in part 1437 of this chapter.

*Average market price* means the price or dollar equivalent on an appropriate basis for an eligible crop established by CCC for determining payment amounts. Such price will be based on the harvest basis without the inclusion of transportation, storage, processing, packing, marketing, or other post-harvesting expenses and will be based on historical data.

*Catastrophic risk protection* means the minimum level of coverage offered by FCIC.

*CCC* means the Commodity Credit Corporation.

*Control county* means for a producer with farming interests in only one county, the county FSA office in which the producer's farm(s) is administratively located; or for a producer with farming interests that are administratively located in more than one county FSA office, the county FSA office designated by FSA to control the payments received by the producer.

*County committee* means the county FSA committee.

*Crop insurance* means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

*Crop year* means: for insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy; and for non-insurable crops, the year harvest normally begins for the crop, except the crop year for all aquacultural species and nursery crops shall mean the period from October 1 through the following September 30, and the crop year for purposes of calculating honey losses shall be the period running from January 1 through the following December 31.

*Disaster* means damaging weather, including drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or any combination thereof. Disaster includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as disease and insect infestation.

*Eligible crop* means a crop insured by FCIC as defined in part 400 of this title, or included under the non-insured crop disaster assistance program (NAP) as defined under part 1437 of this chapter. Tobacco, sugar cane, and sugar beets are not eligible under this part. Losses of livestock and livestock related losses are not compensable under this part but may, depending on the circumstances, be compensable under part 1439 of this chapter.

*End use* means the purpose for which the harvested crop is used, such as grain, hay or seed.

*Expected market price* (price election) means the price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

*Expected production* means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

*Final planting date* means the date established by RMA for insured and uninsured crops by which the crop must be initially planted in order to be insured for the full production guarantee or amount of insurance per acre. For non-insurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

*Flood prevention* means with respect to aquacultural species, placing the aquacultural facility in an area not prone to flood; in the case of raceways, providing devices or structures designed for the control of water level; and for nursery crops, placing containerized stock in a raised area above expected flood level and providing draining

facilities, such as drainage ditches or tile, gravel, cinder or sand base.

*FSA* means the Farm Service Agency.

*Good nursery growing practices* means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

*Growing media* means for aquacultural species, media that provides nutrients necessary for the production of the aquacultural species and protects the aquacultural species from harmful species or chemicals; and for nursery crops, media designed to prevent root rot and other media-related problems through a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced

*Harvested means:*

(1) For insured and uninsured crops, harvested as defined according to the applicable crop insurance policy;

(2) For non-insurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For non-insurable crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically harvested non-insurable crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

*Historic yield* means, for a unit, the higher of the county average yield or the producer's approved yield. The COC may adjust the yield if the producer, practice, crop type or area is not capable of producing a crop at that level during the normal year. The yield may also be adjusted, or production assigned for ineligible causes of loss. The historic yield for:

(1) An insured participant shall be the higher of the county average yield listed on the crop table or the approved federal crop insurance APH, for the disaster year.

(2) NAP participants shall be the higher of the county average yield as listed on the crop table or approved NAP APH for the disaster year.

(3) Participants without federal crop insurance or NAP coverage for the disaster year shall be assigned the county average listed on the crop table.

*Insurance is available* means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy can be obtained through the RMA system, except if the Group Risk Plan or Adjusted Gross Revenue Plan of crop insurance was the only plan of insurance available for the crop in the county in the applicable crop year, insurance is considered not available for that crop.

*Insured crops* means those crops covered by crop insurance pursuant to 7 CFR chapter IV and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

*Limited coverage* means plans of crop insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

*Maximum loss level* means the maximum level of crop loss to be applied to a producer without acceptable production records. Loss levels are expressed in either a percent of loss or yield per acre, and should reflect the amount of production that a producer should have made considering the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

*Multi-use crop* means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and/or grazing.

*Multiple cropping* means the planting of two or more different crops on the same acreage for harvest within the same crop year.

*Multiple planting* means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

*NASS* means the National Agricultural Statistics Service.

*Net Crop Insurance Indemnity* means the indemnity minus the producer paid premium.

*Non-insurable crops* means those crops for which crop insurance was not available.

*Normal mortality* means the percentage of dead aquacultural species that would normally occur during the crop year.

*Pass-through funds* means revenue that goes through, but does not remain in, a person's account, such as money

collected by an auction house or consignment business that is subsequently paid to the sellers or consignors, less a commission withheld by the auction house.

*Person* means person as defined in part 1400 of this chapter, and all rules with respect to the determination of a person found in that part shall be applicable to this part. However, the determinations made in this part in accordance with 7 CFR part 1400, subpart B, Person Determinations, shall also take into account any affiliation with any entity in which an individual or entity has an interest, irrespective of whether or not such entities are considered to be engaged in farming.

*Planted acreage* means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seed bed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

*Prevented planting* means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC. The eligible cause of loss must have:

(1) Occurred after a previous planting period for the crop, and

(2) Occurred before the final planting date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Generally affected other producers in the area, as determined by CCC.

*Production* means quantity of the crop or commodity produced expressed in a specific unit of measure such as bushels, pounds, etc.

*Rate* means price per unit of the crop or commodity.

*Related condition* means with respect to disaster, a condition that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated as a result of damaging weather as determined in accordance with instructions issued by the Deputy Administrator.

*Reliable production* records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are

determined acceptable by the county committee.

*Repeat crop* means with respect to a producer's production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

*RMA* means the Risk Management Agency.

*Salvage value* means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

*Secondary use* means the harvesting of a crop for a use other than the intended use, except for crops with intended use of grain, but harvested as silage, ensilage, cabbage, hay, cracked, rolled, or crimped.

*Secondary use value* means the value determined by multiplying the quantity of secondary use times the CCC-established price for this use.

*State committee* means the FSA State committee.

*Uninsured crops* means those crops for which Federal crop insurance was available, but the producer did not purchase insurance.

*Unit* means, unless otherwise determined by the Deputy Administrator, basic unit as described in part 457 of this title that, for ornamental nursery production, shall include all eligible plant species and sizes.

*Unit of measure* means:

(1) For all insured and uninsured crops, the FCIC-established unit of measure;

(2) For all non-insurable crops, if available, the established unit of measure used for the 2002 Noninsured Crop Assistance Program price and yield;

(3) For aquacultural species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquacultural species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the former Trust Territory of the Pacific Islands, which include Palau, Federated

States of Micronesia and the Marshall Islands.

*USDA* means United States Department of Agriculture.

*Value loss crop* will have the meaning assigned in part 1437 of this chapter.

*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.

*Yield* means unit of production, measured in bushels, pounds, etc., per area of consideration, usually measured in acres.

#### **§ 1480.4 Producer eligibility.**

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered losses of eligible crops in 2001 or 2002 as a result of a disaster or related condition, or as further specified in this part. Producers may not receive benefits with respect to volunteer stands of crops.

(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) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12, for the 2001 or 2002 crop year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law.

#### **§ 1480.5 Time for filing application.**

Applications for benefits under the 2001 or 2002–Crop Disaster Program must be filed in the county FSA office serving the county where the producer's farm is located for administrative purposes before the close of business on August 25, 2003, or such other later date that may be announced by the Deputy Administrator.

#### **§ 1480.6 Limitations on payments and other benefits.**

(a) A producer may receive disaster benefits on either 2001 or 2002 crop losses as specified under this part.

(b) Payments will not be made under this part for grazing losses.

(c) CCC may divide and classify crops based on loss susceptibility, yield, and other factors.

(d) No person shall receive more than a total of \$80,000 in disaster benefits under this part, unless otherwise specified.

(e) No person shall receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by CCC. The sum of the value of the crop not lost if any; the disaster payment; and the net crop insurance indemnity, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

(f) A person whose gross revenue is in excess of \$2.5 million for the preceding tax year shall not be eligible to receive disaster benefits under this part. Gross revenue includes the total income and total gross receipts of the person, before any reductions. Gross revenue shall not be adjusted, amended, discounted, netted or modified for any reason. No deductions for costs, expenses, or pass through funds will be deducted from any calculation of gross revenue. For purposes of making this determination, gross revenue means the total gross receipts received from farming, ranching and forestry operations if the person receives more than 50 percent of such person's gross income from farming or ranching; or the total gross receipts received from all sources if the person receives 50 percent or less of such person's gross receipts from farming, ranching and forestry.

#### **§ 1480.7 Requirement to purchase crop insurance and non-insurable coverage.**

(a) Except as provided further in this section, any producer who elected not to purchase crop insurance on an insurable 2001 or 2002 crop for which the producer receives crop loss assistance or for non-insurable crops, elected not to participate in NAP for the year for which benefits are received must:

(1) Purchase crop insurance with additional coverage on that crop for the 2003 and 2004 crop years for the insurable crops.

(2) NAP coverage by paying the administrative fee by the applicable State filing deadline and complete all required program requirements including yearly acreage reports, for the non-insurable crop for both 2003 and 2004 crop years

(b) If, at the time the producer applies for the 2001 or 2002 CDP the sales closing date for 2003 insurable crops, or for 2003 non-insurable crops for which the producer sought benefits under the 2001 or 2002 CDP has passed, the

producer must purchase crop insurance policy or obtain NAP coverage, as applicable, for the next available 2 crops years.

(c) If any producer fails to purchase crop insurance and/or NAP, as required in paragraph (a) or (b) of this section, the producer shall reimburse CCC for the full amount of the assistance, plus interest, provided to the producer under this part.

#### **§ 1480.8 Miscellaneous provisions.**

(a) A person shall be ineligible to receive disaster assistance under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(b) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(c) In the event that any request for assistance or payment under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(d) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(e) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth in parts 11 and 780 of this title.

(f) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(g) For the purposes of 28 U.S.C. 3201(e), CCC waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the 2001 or 2002 CDP benefits

to reduce the amount of the judgment lien.

**§ 1480.9 Matters of general applicability.**

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established in accordance with part 457 of this title. Insured crops may have basic units established if the existing unit structure is based on enterprise units or whole county units or written agreements. For uninsured and non-insurable crops, basic units will be established for these purposes.

(b) County average yield for loss calculations will be the average of the 1996 through 2000 official county yields established by CCC, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production when the county committee determines:

- (1) An acceptable appraisal or record of harvested production does not exist;
- (2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors, that cause lower yields than those upon which the historic yield is based;
- (3) The producer has a contract providing a guaranteed payment for all or a portion of the crop; or
- (4) The crop is planted beyond the normal planting period for the crop.

(d) The county committee shall establish a maximum loss level that should reflect the amount of production producers should have produced considering the eligible disaster conditions in the area or county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

- (1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or
- (2) Acceptable production records for harvested acres are not available from any source.

(e) Assigned production or reduced yield for practices that result in lower yields than those for which the historic yield is based shall be established based on the acres found to have been subjected to those practices.

(f) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. With the exception of replanted crops, if the crop is planted after the final planting date by:

- (1) Through 10 calendar days, the assigned production reduction will be

based on one percent of the payment yield for each day involved;

(2) Eleven (11) through 24 calendar days, the assigned production reduction will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each day of days 11 through 24 that are involved; and

(3) Twenty-five (25) or more calendar days or a date from which the crop would not reasonably be expected to mature by harvest, the assigned production reduction will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(4) CCC may adjust items 1 through 3 to make a comparable assignment for short rotation crops such as vegetables which may have a 30-day growing period.

(g) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

- (1) Determining the total amount of guaranteed payment for the unit;
- (2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and
- (3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment, or combination thereof if greater.

**§ 1480.10 Eligible disaster conditions.**

(a) Except as provided in paragraph (b) of this section, this part applies to losses where the crop could not be planted or crop production, both in quantity and quality, was adversely affected by disasters as defined in 1480.3 or:

- (1) Insect infestation as a related condition to damaging weather if documented by COC with published data;
- (2) Disease as a related condition to damaging weather;
- (3) Plum pox virus;
- (4) Pierce's disease;
- (5) Watermelon sudden wilt;
- (6) Salt water intrusion of an irrigation supply;
- (7) Mexican fruit fly quarantine in San Diego and San Bernardino counties in California;
- (8) Irrigation water rationing if proof is provided that water was rationed by a Government entity or water district (unless the producer was compensated

by the Government entity or water district);

- (9) Grasshoppers;
- (10) Lack of water supply due to drought conditions for irrigated crops;
- (11) Mormon crickets; or
- (12) Other causes or factors as determined by the Deputy Administrator.

(b) Disaster benefits will not be available under this part if the crop could not be planted or crop production, both in quantity and quality, was adversely affected by:

- (1) Poor farming practices;
- (2) Poor management decisions; or
- (3) Drifting herbicides.

**§ 1480.11 Qualifying 2001 or 2002-crop losses.**

(a) To receive disaster benefits under this part, the county committee must determine that because of a disaster, the producer with respect to the 2001 or 2002 crop year:

- (1) Was prevented from planting a crop;
  - (2) Sustained a loss in excess of 35 percent of the expected production of a crop; or
  - (3) Sustained a loss in excess of 35 percent of the value for value loss crops.
- (b) Calculation of benefits under this part shall not include losses:
- (1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis;
  - (2) That are the result of the failure of the producer to re-seed or replant to the same crop in the county where it is customary to re-seed or replant after a loss;
  - (3) That are not as a result of a natural disaster, unless otherwise specified in § 1480.10;
  - (4) To crops not intended for harvest in crop year 2002;
  - (5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;
  - (6) To home gardens;
  - (7) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or
  - (8) If losses could be attributed to conditions occurring outside of the applicable crop year growing season.

(c) Calculation of benefits under this part for ornamental nursery stock shall not include losses:

- (1) Caused by a failure of power supply or brownouts;
- (2) Caused by the inability to market nursery stock as a result of quarantine,

boycott, or refusal of a buyer to accept production;

(3) Caused by fire;

(4) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock that have not been controlled; or

(5) Caused by the collapse or failure of buildings or structures.

(d) Calculation of benefits under this part for honey where the honey production by colonies or bees was diminished, shall not include losses:

(1) Where the inability to extract was due to the unavailability of equipment; the collapse or failure of equipment or apparatus used in the honey operation;

(2) Resulting from improper storage of honey;

(3) To honey production because of bee feeding;

(4) Caused by the application of chemicals;

(5) Caused by theft, fire, or vandalism;

(6) Caused by the movement of bees by the producer or any other person;

(7) Due to disease or pest infestation of the colonies; or

(8) Loss calculations shall take into account other conditions and adjustments provided for in this part.

#### **§ 1480.12 Rates and yields; calculating payments.**

(a)(1) Payments made under this part to a producer for a loss on a unit with respect to yield based crops are determined by multiplying the payment rate established for the crop by CCC, times the loss of production which exceeds 35 percent of the expected production, as determined by CCC, of the unit.

(2) Payments made under this part to a producer for a loss on a unit with respect to value based crops are determined by multiplying: the payment rate established for the crop by CCC, times the loss of value which exceeds 35 percent of the expected production value, as determined by CCC, of the unit.

(3) Payments made under this part may be adjusted by CCC to reflect losses due to quality factors adversely affected by a disaster. For FSA loan commodities, production to count may be reduced using the schedule of premiums and discounts for FSA commodity loans. Additional quality loss adjustments may be made for single market crops, using a 20 percent quality loss threshold. The quality loss threshold may be determined by multiplying: 65 percent of the affected quantity, times 65 percent of the result of subtracting: the value of the crop due to the effects of the disaster, as determined by CCC, from the value of

the crop if it had not been affected by the disaster, as determined by CCC. Quality adjustments for multiple market crops sold to a lower priced market as a result of poor quality will be determined by using the difference between the average market price for the intended use and the average market price for the actual use, as determined by CCC.

(b) Payment rates for 2001 or 2002 year crop losses shall be:

(1) 50 percent of the maximum established RMA price for insured crops;

(2) 50 percent of the State average price for non-insurable crops; and

(3) 45 percent of the maximum established RMA price for uninsured crops.

(c) Except as provided elsewhere in this part, disaster benefits under this part for losses to crops shall be paid in an amount determined by multiplying the loss of production in excess of 35 percent of the expected production by the applicable payment rate established according to paragraph (a) of this section.

(d) Up to three separate payment rates and yields for the same crop may be established by the county committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(f) Each eligible producer's share of a disaster payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced.

(g) When calculating a payment for a unit loss:

(1) An unharvested payment factor shall be applied to crop acreage planted but not harvested;

(2) A prevented planting factor shall be applied to any prevented planted acreage eligible for payment; and

(3) Unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

#### **§ 1480.13 Production losses, producer responsibility.**

(a) Where available and determined accurate, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA county committee makes inquiry, producers are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the county committee; and

(5) Providing supporting documentation if the county committee has reason to question the disaster event or that all production has been accounted for.

(c) In determining production under this section the producer must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Producers must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

#### **§ 1480.14 Determination of production.**

(a) Production under this part shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage,

cabbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by CCC.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use with:

(1) The intended use or uses for disaster purposes based on historical production and acreage evidence provided by the producer; and

(2) The eligible acres for each use and the calculation of the disaster payment will be determined by the county committee according to instructions issued by the Deputy Administrator.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 45 percent of the salvage value received will be deducted from the disaster payment.

(g) If a producer does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, for purposes of determination the production shall be the greater of the actual production or the guaranteed payment converted to production as determined by CCC.

(h) Production that is commingled between units before it was a matter or combination of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective unit by CCC. Commingled production may be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop.

(5) A crop is late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(j) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

#### **§ 1480.15 Calculation of acreage for crop losses other than prevented planted.**

(a) Acreage shall be calculated using the number of acres shown to have been planted to a crop.

(b) In cases where there is a repeat crop or a multiple planted crop in more than one planting period, or if there is multiple cropped acreage meeting criteria established in paragraph (c) or (d) of this section, each of these crops may be considered separate crops for 2001 or 2002 CDP if the county committee determines that all of the following conditions are met:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) Both the initial and subsequent planted crops were planted within the normal planting period for that crop;

(3) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices; and

(4) Each planting could reach maturity if each planting was harvested or would have been harvested.

(c) In cases where there is multiple cropped acreage, each crop may be eligible for disaster assistance separately if both of the following conditions are met:

(1) The specific crops are approved by the State Committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator; and

(2) The farm containing the multiple cropped acreage has a history of multiple cropping based on timely filed crop acreage reports.

(d) Producers with multiple cropped acreage not meeting the criteria in paragraph (c) of this section may be eligible for disaster assistance on more than one crop if the producer has verifiable records establishing a history of carrying out a successful multiple cropping practice on the specific crops for which assistance is requested. All

required records acceptable to CCC as determined by the Deputy Administrator must be provided before payments are issued.

(e) Producers with multiple cropped acreage not meeting the criteria in paragraphs (c) or (d) of this section must select the crop for which assistance will be requested. If more than one producer has an interest in the multiple cropped acreage, all producers must agree to the crop designated for payment by the end of the application period or no payment will be approved for any crop on the multiple cropped acreage.

(f) Benefits under this part shall apply to irrigated crops where the acreage was affected by a lack of water or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

#### **§ 1480.16 Calculation of prevented planted acreage.**

(a) When determining losses under this part, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this part for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this part for prevented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: peppers; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) The producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that:

(1) Prevented other producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Occurred after the previous planting period for the crop.

(3) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for that crop.

(e) Prevented planted disaster benefits under this part shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; honey;

maple sap; millet; mint; nursery crops; cultivated wild rice; fresh market beans; cabbage, pumpkins, sweet potatoes; winter squash, turfgrass sod, and vine crops;

(2) Uninsured crop acreage that is unclassified for insurance purposes;

(3) Acreage that is used for conservation purposes or intended to be left unplanted under any CCC or USDA program;

(4) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(5) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(6) Acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(7) Acreage for which the producer or any other person received a prevented planting payment for any crop for the same acreage, excluding share arrangements;

(8) Acreage for which the producer cannot provide proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of at least producing a normal yield; and

(9) Any other acreage for which, for whatever reason, there is cause to question whether the crop could have been planted for a successful and timely harvest, or for which prevented planting credit is not allowed under the provisions of this part.

(f) Prevented planting payments are not provided on acreage that had either a previous or subsequent crop planted on the acreage, unless the county committee determines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

(3) Both the initial and subsequent planted crops were planted or prevented-planting within the normal planting period for that crop;

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices; and

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in § 1480.15.

(g)(1) Disaster benefits under this part shall not apply to crops where the prevented-planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

(2) Prolonged precipitation deficiencies must be at the D2 level or higher as determined by using the U.S. Drought Monitor; and

(3) Verifiable information collected by sources whose business or purpose to record weather conditions, including but not limited to the local weather reporting stations of the U.S. National Weather Service.

(h) Prevented planting benefits under this part shall apply to irrigated crops where the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

(i) For uninsured or non-insurable crops and the insured crops listed in paragraph (c) of this section, for prevented planting purposes:

(1) The maximum prevented-planted acreage for all crops cannot exceed the number of acres of cropland in the unit for the crop year and will be reduced by the number of acres planted in the unit;

(2) The maximum prevented planted acreage for a crop cannot exceed the number of acres planted by the producer, or that was prevented from being planted, to the crop in any 1 of the 4 crop years previous to the disaster year as determined by the county committee;

(3) For crops grown under a contract specifying the number of acres contracted, the prevented-planted acreage is limited to the result of the number of acres specified in the contract minus planted acreage;

(4) For each crop type or variety for which separate prices or yields are sought for prevented-planted acreage, the producer must provide evidence that the claimed prevented-planted acres were successfully planted in at least 1 of the most recent 4 crop years; and

(5) The prevented planted acreage must be at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

(j) Notwithstanding the provisions of part 718 of this chapter, late-filed crop acreage reports for previous years shall not be accepted for CDP purposes.

#### **§ 1480.17 Quantity adjustments for diminished quality for certain crops.**

(a) For the crops identified in paragraph (b) of this section, subject to this part, the quantity of production of crops of the producer shall be adjusted to reflect diminished quality resulting from the disaster.

(b) Crops eligible for quality adjustments to production are limited to:

(1) Barley; canola; corn; cotton; crambe, flaxseed; grain sorghum; mustard seed; oats; peanuts; rapeseed; rice; safflower; soybeans; sunflower-oil; sunflower-seed; wheat; and

(2) Crops with multiple market uses such as fresh, processed or juice, as supported by NASS data or other data as CCC determines acceptable.

(3) Single market crops if the COC determines there is sufficient data to establish 5 quality loss levels.

(c) The producer must submit documentation for determining the grade and other discount factors that were applied to the crop.

(d) Quality adjustments will be applied to crops experiencing at least a 20 percent loss after production has been adjusted to standard moisture, when applicable.

(e) For all crops listed in paragraph (b)(1) of this section, except for cotton, if a quality adjustment has been made for multi-peril crop insurance purposes, an additional adjustment will not be made.

(f) Quality adjustments for crops, other than cotton and peanuts listed in paragraph (b)(1) of this section may be made by applying an adjustment factor based on dividing the CCC marketing assistance loan rate applicable to the crop and producer determined according to part 1421 of this chapter by the unadjusted county marketing assistance loan rate for the crop. For crops that receive a grade of "sample" and are marketed through normal channels, production will be adjusted as determined by CCC. County committees may, with state committee concurrence, establish county average quality adjustment factors.

(g) Quality adjustments for cotton shall be based on the difference between:

(1) The loan rate applicable to the crop and producer determined according to part 1427 of this chapter; and

(2) The adjusted county loan rate. The adjusted county rate is the county loan rate adjusted for the 5-year county average historical quality premium or discount, as determined by CCC.

(h) For 2001 quota and non-quota peanuts and 2002 peanuts, quality



adjustments shall be based on the difference between the actual sales price, or other proceeds, received and the National average support price by type of peanut for the applicable crop year.

(i) Quality adjustments for crops with multiple market uses such as fresh, processed and juice, shall be applied based on the difference between the producer's historical marketing percentage of each market use compared to the actual percentage for the 2001 or 2002 crop year. These quality adjustments are built into the production loss determination. Production determinations from Federal crop insurance will not be used.

(j) Except as determined by the Deputy Administrator, quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the county committee with proof of a price reduction because of aflatoxin. The aflatoxin level must be 20 parts per billion or more before a quality adjustment will be made. The quality adjustment factor applied to affected production is .50 if the production is marketable. If the production is unmarketable due to aflatoxin levels of at least 20 parts per billion, production will be adjusted to zero. Any value received will be considered salvage.

(k) Any quantity of the crop determined to be salvage will not be considered production. Salvage values shall be factored by 0.45 times the producer's share. This amount will be deducted from the disaster payment.

(l) Quantity adjustments for diminished quality under this section will not be applied to crops that are, under § 1480.18, value loss crops.

(m) Quantity adjustments for diminished quality shall also not apply under this section to: hay, honey, maple sap, turfgrass sod, crops marketed for a use other than an intended use for which there is not an established county price or yield, or any other crop that the Deputy Administrator deems it appropriate to exclude.

#### **§ 1480.18 Value loss crops.**

(a) Irrespective of any inconsistent provisions in other sections, this section shall apply to the following crops, which are considered "value loss crops": ornamental nursery; Christmas trees; vegetable and root stock including ginseng root; aquaculture, including ornamental fish, and such other crops as may be determined appropriate for treatment as "value loss crops".

(b) For crops specified in paragraph (a) of this section, disaster benefits under this part are calculated based on

the loss of value at the time of disaster, as determined by CCC.

(c) For aquaculture, disaster benefits under this part for aquacultural species are limited to those aquacultural species that were placed in the aquacultural facility by the producer. CDP benefits shall not be available for aquacultural species that are growing naturally in the aquaculture facility. Benefits under this part are limited to aquacultural species that were planted or seeded on property owned or leased by the producer where that land has readily identifiable boundaries, and over which the producer has total control of the waterbed and the ground under the waterbed. Producers who only have control of the waterbed or the ground under the waterbed but not both will not be eligible for disaster benefits under this part.

(d) For ornamental nursery crops, disaster benefits under this part are limited to ornamental nursery crops that were grown in a container or controlled environment for commercial sale on property owned or leased by the producer, and cared for and managed using good nursery growing practices. Indigenous crops are not eligible for benefits under this part. Producers who participated in the previous Florida Nursery Program are eligible for either of the following:

(1) 2001 losses that occurred between January 1, 2001 and September 30, 2001.

(2) 2002 losses that occurred between October 1, 2001 and September 30, 2002.

(e) For vegetable and root stock, disaster benefits under this part are limited to plants grown in a container or controlled environment for use as transplants or root stock by the producer for commercial sale on property owned or leased by the producer and managed using good rootstock or fruit and vegetable plant growing practices.

(f) For ginseng, only ginseng that meets all the requirements of cultivated ginseng shall be considered as eligible for benefits under this part. Ginseng is defined as cultivated ginseng roots and seeds that meet the following requirements:

(1) Grown in raised beds above and away from wet and low areas protected from flood;

(2) Grown under man-made canopies that provide 75 to 80 percent shade coverage;

(3) Grown in well drained media with a pH adjustment of at least 5.5 and which protects plants from disease; and

(4) Grown with sufficient fertility and weed control to obtain expected

production results of ginseng root and seed.

(g) Evidence of the above ginseng practice requirements must be provided by the producer if requested by the county committee. Any ginseng that is grown under cultivated practices or simulated wild or woodland conditions that do not meet these requirements are not eligible for disaster assistance under this part.

(h) Because ginseng is a perennial crop, the producer must provide annual crop history to establish when the loss occurred and the extent of such loss. If the producer does not or is unable to provide annual records to establish the beginning inventory, before the loss, and ending inventory, after the loss, production shall be assigned by the county committee.

(i) Aside from differences provided for in this section, all other conditions for eligibility contained in this part shall be applied to value loss crops.

#### **§ 1480.19 Other provisions for specialty crops.**

(a) For turfgrass sod, disaster benefits under this part are limited to turfgrass sod that would have matured and been harvested during 2001 or 2002, when a disaster caused in excess of 35 percent of the expected production to die.

(b) For honey, disaster benefits under this part are limited to table and non-table honey produced commercially for human consumption. For calculating benefits, all honey is considered a single crop, regardless of type or variety of floral source or intended use.

(c) For maple sap, disaster benefits under this part are limited to maple sap produced on private property in a controlled environment by a commercial operator for sale as sap or syrup. The maple sap must be produced from trees that are: located on land the producer controls by ownership or lease; managed for production of maple sap; and are at least 30 years old and 12 inches in diameter.

#### **§ 1480.20 Misrepresentation and scheme or device.**

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to disaster payments and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter.

(b) A producer shall refund to CCC all disaster payments, plus interest as determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts if the producer is determined to have knowingly done any of the following.

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

**§ 1480.21 Offsets, assignments and debt settlement.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter apply to payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

(c) A debt or claim may be settled according to part 1403 of this chapter.

**§ 1480.22 Compliance with highly erodible land and wetland conservation provisions.**

Part 12 of this title applies to this part.

Signed in Washington, DC, on June 20, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1710 and 1721

RIN 0572-AB79

#### Extensions of Payments of Principal and Interest

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulation on extensions of payments of principal and interest, to include a maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would allow the Borrower to offset all or part of the administrative costs involved. In addition, this regulation will set forth the procedure for RUS

Borrowers to request a section 12(a) extension for distributed generation projects. These changes are intended to clarify the procedures Borrowers are to follow when requesting extensions of payments of principal and interest.

**DATES:** This rule will become effective on July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gail P. Salgado, Management Analyst, Rural Utilities Service, Electric Program, Room 4024, South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250-1560. Telephone (202) 205-3660.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

#### Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the matter of this rule.

#### Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0572-0123.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to

the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

#### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

#### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

#### Background

On October 8, 2002, at 67 FR 62652, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR parts 1710 and 1721, "Extensions of Payments of Principal and Interest," which proposed to amend its regulation on extensions of payment of principal and interest to include a maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would allow the Borrower to offset all or part of the administrative costs involved. In addition, the proposed rule set forth the procedure for RUS Borrowers to request a section 12(a) extension for distributed generation projects. These changes were intended to clarify the procedures Borrowers are to follow when requesting extensions of payments of principal and interest.

Written comments on the proposed rule were received and they are summarized as follows: