

## Commodity Credit Corporation, USDA

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race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

[67 FR 54939, Aug. 26, 2002. Redesignated at 67 FR 65690, Oct. 28, 2002]

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AUTHORITY: 7 U.S.C. 7333; 15 U.S.C. 714 *et seq.*; and 48 U.S.C. 1469.

SOURCE: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.

#### Subpart A—General Provisions

##### § 1437.1 Applicability.

(a) The Noninsured Crop Disaster Assistance Program (NAP) is intended to provide eligible producers of eligible crops coverage equivalent to the catastrophic risk protection level of crop insurance. NAP is designed to help reduce production risks faced by producers of commercial crops or other

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agricultural commodities. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or where producers are prevented from planting an eligible crop.

(b) The provisions contained in this part are applicable to eligible producers and eligible crops for which catastrophic coverage under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)), as amended, or its successors, is not available.

(c) The regulations of this part are applicable to the 2001 and subsequent crop years.

### § 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (who also serves as Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

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

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

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

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

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

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines (except statutory deadlines) in cases where lateness to file does not adversely affect operation of the program.

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(f) Items including, but not limited to, application periods, coverage periods, application deadlines, fees, prices, yields, and payment factors established for NAP in accordance with this part that are used for similarly situated participants and eligible crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006]

### § 1437.3 Definitions.

The definitions and program parameters set out in this section shall be applicable for all purposes of administering the Noninsured Crop Disaster Assistance Program provided for in this part. Although the terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, the definitions set forth in this section shall govern for all purposes of administering the Program.

*Administrative county office* means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

*Animal Unit Days (AUD)* means an expression of expected or actual stocking rate for pasture or forage.

*Application Closing Date* means the last date, as determined by CCC, producers can submit an application for coverage for noninsured crops for the specified crop year.

*Catastrophic coverage* means a catastrophic risk protection (CAT) level of crop insurance available in accordance with section 508(b) of the Federal Crop Insurance Act, as amended.

*Controlled environment* means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water, soil, or nutrients) by the producer, is in fact controlled by the producer.

*Crop year* means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

*Fiber* means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by CCC.

*Final planting date* means the date which marks the end of the planting period for the crop and in particular the last day, as determined by CCC, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

*Food* means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by CCC.

*Good farming practices* means the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. These practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions.

*Harvested* means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

*Industrial crop* means a commercial crop, or other agricultural commodity utilized in manufacturing. Industrial crops include castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame and other crops specifically designated by CCC.

*Intended Use* means for a crop or a commodity, the end use for which it is grown and produced.

*Multiple planted* means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by CCC.

*Normal harvest date* means the date harvest of the crop is normally completed in the administrative county, as determined by CCC.

*Seed crop* means propagation stock commercially produced for sale as seed stock for eligible crops.

*Seeded forage* means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

*T-Yield* means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

*Transitional yield* means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006]

#### § 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available for loss of production or prevented planting of eligible commercial crops or other agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by CCC, and is considered timely-planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by CCC, may be

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planted and remain eligible for reduced NAP coverage; and

(4) Determined by CCC to be eligible crops:

(i) For which catastrophic coverage is not available; or

(ii) For specific perils not included under available catastrophic coverage.

(b) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their by-products;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops; except for the 2001 and preceding crop years assistance for forage produced on Federal- and State-owned lands is available only for seeded forage.

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Industrial crops;

(vii) Seed crops, including propagation stock such as non-ornamental seedlings, sets, cuttings, rootstock, and others, as determined by CCC; and

(viii) Sea grass and sea oats.

[67 FR 12448, Mar. 19, 2002, as amended at 67 FR 62324, Oct. 7, 2002; 71 FR 13742, Mar. 17, 2006]

**§ 1437.5 Coverage period.**

(a) The coverage period is the time during which coverage is available against loss of production of the eligible crop as a result of natural disaster.

(b) The coverage period for annual crops, including annual forage crops, begins the later of 30 calendar days after the date the application for coverage is filed; or the date the crop is planted, not to exceed the late planting period; and ends on the earlier of the date harvest is complete; the normal harvest date of the crop in the area; the date the crop is abandoned; or the date the crop is destroyed.

(c) Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins 30 calendar days after the application closing date; and ends as determined by CCC.

(d) Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including floriculture and mushrooms begins 30 calendar days after the application closing date; and ends the last day of the crop year, as determined by CCC.

(e) The coverage period for honey begins 30 calendar days after the application closing date and ends the last day of the crop year, as determined by CCC.

(f) The coverage period for maple sap begins 30 calendar days after the application closing date and ends on the earlier of the date harvest is complete; or the normal harvest date.

(g) For biennial and perennial forage crops the coverage period begins the later of 30 calendar days after the application closing date; for first year seedlings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006]

**§ 1437.6 Application for coverage and service fee.**

(a) With respect to each crop, commodity, or acreage, producers must file an application for coverage under this part in the administrative county FSA office no later than the application closing date.

(b) The service fee must be paid at the time of the application. The service fee is \$100 per crop per administrative county, up to \$300 per producer per administrative county, but not to exceed \$900 per producer.

(c) The service fee will be applied per administrative county by crop definition and planting period, as determined by CCC.

(d) Limited resource farmers may request that the service fee be waived and must request such a waiver prior to, or at the same time the application

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for coverage is filed. For this purpose, a "limited resource farmer" shall be given the meaning assigned by 7 CFR 457.8.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006]

**§ 1437.7 Records.**

(a) Producers must maintain records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with §1437.5. For those crops or commodities for which it is impractical, as determined by CCC, to maintain crop acreage, yields or production, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D and E, of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with §1437.6. Producers may be selected on a random or targeted basis and be required to provide records acceptable to CCC to support the certification provided. For each harvested crop for which producers file an application for payment in accordance with §1437.10, producers must provide documentary evidence acceptable to CCC of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history database for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by CCC. Records of production acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC.

(b) During any crop year that a notice of loss is filed according to this part:

(1) Producers of hand-harvested crops shall, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made before deterioration or destruction of the crop residue and within 15 days after harvest is completed. If an appraisal of the crop acreage is determined necessary by CCC, the producer shall not destroy the crop residue until the crop acreage is released by an FCIC- or CCC-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or CCC loss adjusters of hand-harvested crop acreage be completed during non-loss crop years in order to maintain accurate actual production history.

(2) Producers shall not allow the gathering (gleaning) of any produce left in the field following normal harvest of the crop acreage until the crop acreage is released by a qualified CCC or FCIC loss adjustor, as determined by CCC. Except, crop acreage may be released by an authorized CCC representative for acceptable gleaning operations, as determined by CCC, when producers and gleaners agree to provide acceptable records, as determined by CCC, of the quantity of the crop gleaned.

(c) Producers must provide verifiable evidence, as determined by CCC, of:

(1) An interest in the commodity produced or control of the crop acreage on

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which the commodity was grown at the time of disaster; and

(2) The authority of the applicable individual to execute program documents.

(d) Reports of acreage planted or intended but prevented from being planted must be provided to CCC at the administrative FSA office for the acreage no later than the date specified by CCC for each crop and location. Reports of acreage filed beyond the date specified by CCC for the crop and location may, however, be considered timely filed if all the provisions of 7 CFR 718.103 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report prior to the date specified by CCC for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

(1) Number of acres of the eligible crop in the administrative county (for each planting in the event of multiple plantings) in which the producer has a share;

(2) Zero acres planted when the producer's crop for which an application for coverage was filed, is not planted;

(3) The producer's share of the eligible crop at the time an application for coverage was filed;

(4) The FSA farm serial number;

(5) The identity of the crop, practices, intended uses, and for forage crops, the predominant species or type and variety of the vegetation;

(6) The identity of all producers sharing in the crop;

(7) The date the crop was planted or planting was completed, including the age of the perennial crops; and

(8) The acreage intended but prevented from being planted.

(e) Producers receiving a guaranteed payment for planted acreage, as opposed to receiving a payment only upon delivery of the production must provide documentation of any written or verbal contract or arrangement with the buyer to CCC. Net production, as determined by CCC, may be adjusted upward by the amount of production corresponding to the amount of the contract payment received.

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(f) Producers must provide documentation of any salvage value received by or made available for the quantity of the crop or commodity that cannot be marketed or sold in any market, as determined by CCC and any value received by or made available for a secondary use of the crop or commodity.

(g) Producers requesting payment under this part must maintain records which substantiate gross revenue for the tax year preceding the crop year for which coverage is requested.

(h) Producers requesting a waiver of service fees as a limited resource producer must maintain records which substantiate annual gross income for the two tax years preceding the crop year for which coverage is requested.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006]

### § 1437.8 Unit definition.

(a) The unit identifies the interest of the producer in the administrative county on the basis of the unique relationship of the owner to one or more operators. The unit is the foundation for all determinations of acreage, production, value, AUD, approved yields, requisite losses, payments, and other program requirements.

(b) Separate and distinct units are:

(1) One-hundred percent interest as owner/operator;

(2) Less than one-hundred percent interest as owner or operator; or

(3) Less than one-hundred percent interest, as owner or operator in an inverse relationship.

[71 FR 13743, Mar. 17, 2006]

### § 1437.9 Causes of loss.

(a) To be eligible for benefits under this part, an eligible cause of loss must result in:

(1) A loss of production greater than 50 percent of the approved yield in accordance with subpart B of this part;

(2) Prevented planting of greater than 35 percent of the intended crop acreage according to subpart C of this part;

(3) A value loss of greater than 50 percent of the pre-disaster value according to subpart D of this part, or

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(4) An AUD loss of greater than 50 percent of the expected AUD according to subpart E of this part.

(b) The quantity of the crop or commodity will not be reduced for any quality consideration unless a zero value is established.

(c) Eligible causes of loss include:

(1) Damaging weather occurring before or during harvest, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) Adverse natural occurrence before or during harvest, such as earthquake, flood, or volcanic eruption; and

(3) A related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring before or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by CCC.

(d) Due to the unique requirements, such as controlled environments, necessary for successful production of some crops and commodities; not all eligible causes of loss will apply to all crops and commodities.

(e) Ineligible causes of loss include but are not limited to:

(1) Negligence or malfeasance of the producer;

(2) Failure of the producer to reseed to the same crop during the same planting period in those areas and under such circumstances where it is customary;

(3) Failure of the producer to follow good farming practices, as determined by CCC;

(4) 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;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Except for tree crops and perennials and as provided for in §1437.201, inadequate irrigation resources at the beginning of the crop year;

(7) A loss of inventory or yield of aquaculture (including ornamental

fish), floriculture or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason; or

(8) Any failure to provide a controlled environment or exercise good nursery practices when such controlled environment or practices are a condition of eligibility under this part.

[71 FR 13743, Mar. 17, 2006]

**§ 1437.10 Notice of loss, appraisal requirements, and application for payment.**

(a) When an eligible crop is damaged by an eligible cause of loss, at least one producer having a share in the unit must provide a notice of loss to CCC in the administrative FSA county office for the unit, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural occurrence, or date loss of the crop or commodity becomes apparent for low yield claims; and

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, e.g. prevented planting or low yield;

(7) Practices employed to grow the crop, e.g. irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery

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was made for seed, chemicals, fertilizer, etc; and

(iv) What and when land preparation measures, e.g. cultivation, etc. were completed and indicate what has been done or will be done with the acreage, e.g. abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;

(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, e.g. cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, e.g. harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Producers who file a notice of loss, using the appropriate CCC form, for crop acreage that will not be harvested as intended, such as abandoned, put to another use, replanted to the same or a different crop, or in the case of forage, acreage intended to be mechanically harvested that will be both mechanically harvested and grazed, must:

(1) Not put the crop to another use or prepare the acreage for replanting or otherwise change any conditions of the crop or acreage until written notification of release of the crop or acreage is received from CCC;

(2) Request, using the appropriate FSA form, an appraisal of the un-harvested acreage for potential production and release of the crop or acreage:

(i) No less than 15 calendar days before replanting or in the case of forage intended to be mechanically harvested, grazing of the crop acreage.

(ii) Within 15 calendar days after the acreage is abandoned, for example, discontinued care for the crop or provided care so insignificant as to provide no benefit to the crop, as determined by CCC.

(iii) No later than the normal harvest date of the crop, as determined by CCC.

(3) Request the loss adjustor on the day the initial appraisal is completed, or request in any manner of written correspondence received in the FSA administrative county office no later than 15 calendar days after the request for initial appraisal is submitted, that the appraisal be deferred until the end of the growing season, the producer be permitted to establish representative sample areas according to paragraph (d)(4) of this section, and that the acreage be released immediately when:

(i) Time is critical for replanting, or other urgent reasons; and

(ii) Producers and loss adjustors cannot resolve disagreement with the initial appraisal of the acreage to be released.

(4) Establish representative sample areas of the acreage according to the loss adjustor's instructions received on the day the initial appraisal is completed or, if the loss adjustor is not available, according to the FCIC Loss Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the FSA administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted. Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by CCC, until released by CCC.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor's appraisal. Producers unable to be present for the appraisal may contest the results of the appraisal in the FSA administrative county office.

(e) For the 2005 and subsequent crop years, crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide CCC acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by CCC.

(f) Forage acreage for which a notice of loss is filed that was intended to be mechanically harvested but will be grazed and not mechanically harvested, or that was intended to be grazed but will be mechanically harvested and not grazed, does not require an appraisal or release of crop acreage.

(g) Producers must apply for payments prior to the earlier of the:

(1) Date an application for coverage is filed for the crop for the subsequent crop year; or

(2) Application closing date for the crop for the subsequent crop year.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13743, Mar. 17, 2006]

**§ 1437.11 Average market price and payment factors.**

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by CCC;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop type within a State, as determined by CCC, for a crop year.

(b) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(c) Payment factors will be used to calculate assistance for crops produced with significant and variable har-

vesting expenses that are not incurred because the crop acreage was prevented planted or planted but not harvested, as determined by CCC.

(d) An adjusted market price will be calculated based on the provisions in this section and others as may apply. A final payment price will be determined by multiplying, as appropriate, the average market price by the applicable payment factor (i.e. harvested, unharvested, or prevented planting) by 55 percent or, by multiplying the applicable AUD (as adjusted, if adjusted) by 55 percent.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006]

**§ 1437.12 Crop definition.**

(a) For the purpose of providing benefits under this part, CCC will, at its discretion, define crops as specified in this section.

(b) CCC may separate or combine types and varieties as a crop when specific credible information as determined by CCC is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by CCC.

(c) CCC may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC, and all crops are recognized by CCC as able to achieve the expected yield, as determined by CCC.

(d) CCC may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(e) CCC may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in

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an area where the practice is recognized as a good farming practice, as determined by CCC.

(f) CCC may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by CCC, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

**§ 1437.13 Multiple benefits.**

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits in paragraph (a) of this section shall not apply in any respect to Emergency Loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq.*).

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(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

**§ 1437.14 Payment and income limitations.**

(a) NAP payments shall not be made in excess of \$100,000 per person per crop year under this part.

(b) NAP payments shall not be made to a person who has qualifying gross revenues in excess of \$2 million for the most recent tax year preceding the year for which assistance is requested. Qualifying gross revenue means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.

(c) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

(d) Rules set out in 7 CFR part 1400 shall apply in implementing the restrictions of this section.

**§ 1437.15 Miscellaneous provisions.**

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of § 718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, shall apply.

(c) A person shall be ineligible to receive assistance under this part for the crop year plus two subsequent crop years 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.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) 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.

(f) In the event that any request for assistance or payments 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.

(g) 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.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person shall be made without re-

gard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby 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 benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

### **Subpart B—Determining Yield Coverage Using Actual Production History**

#### **§ 1437.101 Actual production history.**

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing non-insured crop disaster assistance.

[71 FR 13744, Mar. 17, 2006]

#### **§ 1437.102 Yield determinations.**

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2005 crop year, the five consecutive crop years immediately preceding the previous crop year would be 1999 through 2003.

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(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(4) Will be based on the most representative available historical information, as determined by CCC, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated, non-irrigated, and organic practices; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will, for all land for those producers who have land physically located in multiple counties and administered in one county office, be based on the administrative county's expected yield for the crop.

(7) May be reduced, on a specific APH basis, when, as determined by CCC, it does not accurately reflect the productive capability of specific crop acreage.

(8) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production his-

tory base period when the producer reports acreage for the crop but fails to certify a report of production. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with §1437.7.

(4) May not be used if the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If CCC determines the documentation is inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and CCC approves such recommendation.

(d) A zero-credited yield:

(1) Will be used in the applicable crop year of the actual production history base period for each crop year following the crop year containing an assigned yield, for which producers do not certify a report of acreage or production, as determined by CCC.

(2) May be replaced with an actual yield when the producer provides a certification of production and acceptable production records for the applicable crop year in accordance with §1437.7.

(e) An approved yield:

(1) Is used in the calculation of the requisite loss and payment.

(2) Is a simple average of a minimum of four base period crop year yields, i.e., actual yield, T-yield, assigned yield, or zero-credited yield. The base

period is 10 crop years, except 5 crop years for apples and peaches, immediately preceding the crop year for which an approved yield is calculated, not including any crop year the crop was out of rotation, not planted, or prevented from being planted.

(3) Shall be calculated according to the following criteria when the producer does not have at least four consecutive crop years of actual, assigned, or zero credited yields beginning with the most recent crop year.

(i) If there are no certified acceptable production records of actual production for the most recent crop year, or zero credited or assigned yields in the producer's APH base period, and no formula provided for the producer under paragraphs (e)(3)(ii) through (iv) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the applicable T-yield for each of the minimum four APH crop years.

(ii) If certified acceptable production records of actual production are available for only the most recent crop year and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-yield for the remaining three of the minimum four APH crop years.

(iii) If certified acceptable production records of actual production are available for only the two most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the remaining two of the minimum four APH crop years.

(iv) If certified acceptable production records of actual production are available for only the three most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the three actual yields plus 100 percent of the applicable T-yield for the remaining crop year of the minimum four APH crop years.

(f) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by CCC, producers may request CCC replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(g) If approved yields were calculated for any of the 1995 through 2000 crop years, and subsequently in that period production was not certified, producers may request CCC replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(h) If producers add land in the farming operation and do not have available production records for the added land CCC will calculate an approved yield for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than 50 percent of the initial approved yield for the crop year and unit acreage has increased by more than 75 percent of the historical average acreage, CCC may adjust the approved yield, as determined by CCC.

(i) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by CCC, will have an approved yield calculated based on a combination of 100 percent of the applicable T-yield and any actual yield for the minimum crop years of the producer's APH base period. Producers who have produced the crop for one or two crop years must provide

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CCC, at the administrative FSA office serving the area in which the crop is located, a certification of production and production records for the applicable crop years in accordance with § 1437.7.

(k) Further adjustments may be made as necessary to accomplish the purposes of this program.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006]

**§ 1437.103 Late-planted acreage.**

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined by CCC, may be eligible for reduced coverage.

(b) Multiple-planted crops, crops with a growing period of 60 calendar days or less, value-loss crops, and fall season small grain crops intended only for grain are not eligible for reduced coverage under late planting provisions.

(c) For crops with a growing period of:

(1) 61 to 120 calendar days and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to twenty calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage plus an additional one percent of the expected production of the applicable late-planted crop acreage for each day beyond five days.

(iii) 21 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer's expected production of the applicable late-planted crop acreage.

(2) 121 days and up and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to 25 days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted

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ed crop acreage plus an additional one percent of the applicable late-planted crop acreage for each day beyond five days.

(iii) 26 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer's expected production of the applicable late-planted crop acreage.

[71 FR 13745, Mar. 17, 2006]

**§ 1437.104 Assigned production.**

(a) When determining losses under this section, assigned production will be used to offset the loss of production when, as determined by CCC, any of the following has occurred:

(1) The loss is a result of an ineligible cause of loss and the loss has not been otherwise accounted for.

(2) The unit acreage was destroyed without consent notwithstanding § 1437.10(d).

(3) The producer has a contract to receive a guaranteed payment for all or a portion of the production, as opposed to or regardless of delivery of such production.

(4) The crop is planted after the STC-established final planting date according to § 1437.103.

(5) Irrigation equipment is not capable of supplying adequate water to sustain the expected production of a normal irrigated crop.

(6) For normal irrigated annual, biennial, and perennial crops, the irrigation practice is not used.

(7) For normal irrigated annual and biennial crops, the supply of available water at the beginning of the crop year is not adequate.

(8) For normal irrigated perennial crops, the supply of available water at the beginning of the crop year is not adequate as a result of an ineligible cause of loss.

[71 FR 13745, Mar. 17, 2006]

**§ 1437.105 Determining payments for low yield.**

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part shall

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be made on eligible crops with eligible losses by:

(1) Multiplying the total eligible acreage planted to the eligible crop by the producer's share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent of the approved yield per acre for the commodity for the producer.

(3) Multiplying the net production of the total eligible acreage by the producer's share;

(4) Subtracting the product of paragraph (a)(3) of this section from the product of paragraph (a)(2) of this section;

(5) Multiplying the difference calculated under paragraph (a)(4) of this section by the final payment price calculated under §1437.11; and

(6) Multiplying the value of salvage and secondary use by the producer's share and subtracting the result from the result of paragraph (a)(5) of this section.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 71 FR 13745, 13746, Mar. 17, 2006]

**§ 1437.106 Honey.**

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with §1437.7, honey producers must provide a record of colonies to CCC. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies shall include:

(1) The address of the producer's headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit shall consist of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the honey operation. Producers must complete the following actions only in the control office:

(1) File an application for coverage;

(2) File a report of colonies;

(3) Report total unit production; and

(4) Request to change a unit's control office.

(g) Actions that may be taken in any Administrative FSA office includes:

(1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with §1437.10.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

(1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006]

**§ 1437.107 Maple sap.**

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

(1) Are located on land the producer controls by ownership or lease;

(2) Are managed for production of maple sap;

(3) Are at least 30 years old and 12 inches in diameter; and

(4) Have a maximum of 4 taps per tree according to the tree's diameter.

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(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with §1437.6, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to CCC no later than the beginning of the crop year.

(d) In addition to the applicable records required under §1437.7, producers must report the:

(1) Total number of eligible trees on the unit;

(2) Average size and age of producing trees; and

(3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap shall be 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by CCC, is available to CCC to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup shall be multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap shall be recorded on the basis of gallons of sap per tap.

(h) The unit's expected production is determined by:

(1) Multiplying the number of taps placed in eligible trees; by

(2) The approved per tap yield as determined in accordance with §1437.102.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006]

**§§ 1437.108–1437.200 [Reserved]**

**Subpart C—Determining Coverage for Prevented Planted Acreage**

**§ 1437.201 Prevented planting acreage.**

(a) In addition to the provisions of this section, the provisions of §718.103 of this title shall apply.

(b) When determining losses under this section:

(1) Producers must be prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(2) Prevented planted acreage will be considered separately from low-yield losses of planted acreage of the same crop.

(c) Acreage and units ineligible for prevented planting coverage includes, but is not limited to:

(1) Value-loss crops, including, but not limited to, Christmas trees, aquaculture, and ornamental nursery;

(2) Tree crops and other perennials, unless:

(i) The producer can prove resources unique to the planting of tree crops and other perennials were available to plant, grow, and harvest the crop, as determined by CCC; and

(ii) CCC has approved the planting period for the crop;

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

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

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

(6) Acreage planted during the late-planting period.

[71 FR 13746, Mar. 17, 2006]

**§ 1437.202 Determining payments for prevented planting.**

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment

for prevented planting will be determined by:

- (1) Adding the total planted and prevented-planted acres;
- (2) Multiplying the sum of paragraph (a)(1) of this section by .35;
- (3) Subtracting the product of paragraph (a)(2) of this section from the total prevented planted acres;
- (4) Multiplying the producer's share by the approved yield by the positive result of paragraph (a)(3) of this section;
- (5) Multiplying the producer's share by the assigned production;
- (6) Subtracting the product of paragraph (a)(5) of this section from the product of paragraph (a)(4) of this section; and
- (7) Multiplying the result of paragraph (a)(6) of this section by the final payment price calculated under § 1437.11.

(b) Yields for purposes of paragraph (a) of this section shall be calculated in the same manner as for low-yield claims.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13746, Mar. 17, 2006]

§§ 1437.203–1437.300 [Reserved]

#### Subpart D—Determining Coverage Using Value

##### § 1437.301 Value loss.

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities which do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. The agency shall determine which crops shall be treated as value-loss crops, but unless otherwise announced, such crops shall be limited to those identified in §§ 1437.303 through 1437.309 as value loss crops. Lost productions of value loss crops shall be compensable only under this subpart.

(b) The crop year for all value loss crops is October 1 through September 30.

(c) Producers must file an application for coverage in accordance with § 1437.6, and must:

(1) Provide a report of the crop, commodity, and facility to CCC for the

acreage or facility, in a form prescribed by CCC, no later than the beginning of the crop year.

(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and

(3) Provide an accurate accounting of the inventory, as required by CCC.

##### § 1437.302 Determining payments.

Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(a) Multiplying the field market value of the crop before the disaster by 50 percent;

(b) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(c) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(d) Multiplying the result from paragraph (a)(3) of this section by 55 percent plus whatever factor deemed appropriate to reflect savings from non-harvesting of the damaged crop or other factors as appropriate;

(e) Multiplying the salvage value by the producer's share;

(f) Subtracting the result from paragraph (a)(5) of this section from the result from paragraph (a)(4) of this section.

##### § 1437.303 Aquaculture, including ornamental fish.

(a) Aquaculture is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible aquacultural species shall only include:

(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.

(2) Fish raised as feed for other fish that are consumed by humans; and

(3) Ornamental fish propagated and reared in an aquatic medium.

(b) The aquacultural facility must be:

(1) A commercial enterprise on private property;

(2) Owned or leased by the producer, with readily identifiable boundaries; and

(3) Managed and maintained using good aquacultural growing practices.

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(c) Producers must:

(1) Ensure adequate and proper flood prevention, growing medium, fertilization or feeding, irrigation and water quality, predator control, and disease control; and

(2) Have control of the waterbed.

(d) Eligible aquacultural species must be:

(1) Placed in the facility and not be indigenous to the facility; and

(2) Kept in a controlled environment; and

(3) Planted or seeded in containers, wire baskets, net pens, or similar device designed for the protection and containment of the seeded aquacultural species.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the aquacultural species are produced in a facility in accordance with paragraphs (b), (c) and (d) of this section.

**§ 1437.304 Floriculture.**

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible floriculture shall be limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by CCC; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by CCC.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under "value loss" rules, but under the rules for normal production

low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value shall be counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted shall be counted as worth full value.

**§ 1437.305 Ornamental nursery.**

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention, growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as an ornamental plant, shall be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ornamental nursery is maintained in accordance with this section.

**§ 1437.306 Christmas tree crops.**

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, shall be considered as worth full value based on the age of the tree at the time of disaster.

**§ 1437.307 Mushrooms.**

(a) Eligible mushrooms is a value loss crop and is only compensable in accord with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

- (1) Temperature and humidity controls;
- (2) Proper and adequate lighting; and
- (3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

- (1) Adequate hygiene;
- (2) Overall cleanliness;
- (3) Isolation or minimum contact procedures;
- (4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the mushrooms are maintained in accordance with this section.

**§ 1437.308 Ginseng.**

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer;

(b) Ginseng will not be eligible to generate benefits under this part if it:

- (1) Is indigenous to the facility;
- (2) Is grown solely for medicinal purposes; and
- (3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

- (1) Adequate drainage;
- (2) Proper and adequate shade;
- (3) Accurate pH level;
- (4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;
- (5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and
- (6) Disease control.

(d) Ginseng producers must:

- (1) Provide a report of inventory of all ginseng, as determined by CCC;
- (2) Provide production and sales records necessary to determine the value of eligible ginseng;
- (3) Allow a CCC-certified loss adjustor to verify loss, including physically removing representative samples;
- (4) Maintain and provide, as determined by CCC, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and

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(5) Possess a valid food processing licence issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ginseng was produced in accordance with this section.

**§ 1437.309 Turfgrass sod.**

(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.

(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.

(c) The unit of measure for all turfgrass sod shall be a square yard.

(d) Turfgrass sod having any value shall be considered as worth full value.

(e) In addition to the records required in §1437.7, producers seeking payment must provide information to CCC regarding the average number of square yards per acre and all unharvested areas.

**§ 1437.310 Sea grass and sea oats.**

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under §1437.305 and such claims shall not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under §1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment

as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with §1437.11.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with §1437.11.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by CCC.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

(1) Be owned or leased by the producer;

(2) Have readily identifiable boundaries; and

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by CCC.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

(1) Flood prevention;

(2) Growing medium;

(3) Fertilization or feeding;

(4) Irrigation and water quality;

(5) Weed control;

(6) Pest and disease control;

(7) Rodent and wildlife control; and

(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by CCC; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster shall be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, shall be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

[67 FR 62324, Oct. 7, 2002]

§§ 1437.311–1437.400 [Reserved]

### Subpart E—Determining Coverage of Forage Intended for Animal Consumption

#### § 1437.401 Forage.

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by CCC, produced in a commercial operation in three or more of the last five crop years, except producers who have not produced forage for the minimum period in order to preserve vegetation and prevent erosion, or otherwise mitigate the impact of disaster conditions, as determined by CCC, shall not be penalized. Benefits are not available for first-year seeding of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by CCC. The commercial operation must use acceptable farming, pasture and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under § 1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart, however, shall govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in § 1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal prior to the onset of grazing of any intended mechanically har-

vested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to CCC as intended to be mechanically harvested, but which is, instead, subsequently grazed, will be considered, for crop definition purposes, as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity. The loss of such grazed forage shall be determined according to paragraph (f) of this section. Except, beginning with the 2005 crop year, for acreage intended to be mechanically harvested which is instead, subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested, but instead grazed, shall be deemed to be un-harvested for the purposes of determining a payment factor.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in § 1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as, water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed, on the basis of:

(1) The percentages of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss, or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area,

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the collective percentage of loss as determined by CCC for the geographical region after consideration of at least two independent assessments of grazed forage acreage conditions. The assessments shall be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Neither the assessments themselves, nor collective loss percentages established pursuant thereto are subject to appeal. CCC's determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13746, Mar. 17, 2006]

**§ 1437.402 Carrying capacity.**

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such

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practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

**§ 1437.403 Determining payments.**

Subject to payment limits, availability of funds, and other limits as may apply, payments for losses of forage reported to FSA as intended to be grazed will be determined by:

(a) Multiplying the eligible acreage by the producer's share;

(b) Dividing the result from paragraph (a) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific acreage, as determined by CCC;

(c) Multiplying the result from paragraph (b) of this section by the number of days established as the grazing period;

(d) Adding adjustments of AUD for practices and production to the product of paragraph (c) of this section;

(e) Multiplying the result from paragraph (d) of this section by the applicable percentage of loss established by CCC;

(f) Multiplying the amount of assigned AUD, as determined by CCC, by the producer's share;

(g) Subtracting the result from paragraph (f) of this section from the result from paragraph (e) of this section;

(h) Multiplying the result from paragraph (d) of this section by 0.50;

(i) Subtracting the result from paragraph (h) of this section from the result from paragraph (g) of this section; and

(j) Multiplying the result from paragraph (i) of this section by the final payment price established in accordance with §1437.11.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13747, Mar. 17, 2006]

**§ 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.**

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560-0175.

**Subpart F—Determining Coverage in the Tropical Region**

SOURCE: 71 FR 52739, Sept. 7, 2006, unless otherwise noted.

**§ 1437.501 Applicability; definition of “tropical region” and additional definitions.**

(a) This subpart shall only apply to covered tropical crops in the tropical region for the 2006 and subsequent crops years, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops shall not apply to “value loss” crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for the program covered in this part shall be determined by the rules that otherwise apply to the program subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that appear elsewhere in this part.

(b) For purposes of this subpart:

(1) *Tropical region* includes, as may be further limited by the Deputy Administrator: Hawaii, American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, and the former Trust Territory of the Pacific Islands (the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau).

(2) *2006 and subsequent crops* means those crops in the ground on or after January 1, 2006.

(3) *Covered tropical crops* means those crops and commodities in the tropical region governed by this subpart, those

being all crops and commodities in the tropical region that are otherwise eligible for generating a benefit claim under this part, except for value-loss crops as defined elsewhere in this part.

(c) The Deputy Administrator may adjust requirements for assistance so as to provide a fair transition from previous rules for crop covered by this subpart to those provisions which are provided for in this subpart.

**§ 1437.502 Coverage periods and fees for covered tropical crops.**

(a) The crop year for all covered tropical crops is the calendar year (January 1 through December 31 beginning in 2006 through subsequent years).

(b) The application closing date for all covered tropical crops is December 1 of the calendar year before the applicable crop year.

(c) For covered tropical crops, per county per crop year, a maximum service fee of \$100.00 is required of the producer for coverage of:

(1) With respect to annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by CCC.

(2) With respect to perennial crops, all acreage of the crop existing during the crop year, as determined by CCC.

(d)(1) Multiple planting periods and final planting dates are not applicable for covered tropical crops. However, nothing in this section shall prohibit assigning different production expectations to different fields.

(2) The coverage period for perennial and other crops covered by this subpart begins on January 1 of the relevant crop year and ends on December 31 of that year.

**§ 1437.503 Covered losses and record-keeping requirements for covered tropical crops.**

(a) Prevented planting coverage is not available for covered tropical crops, other than in Hawaii and Puerto Rico, except as approved by the Deputy Administrator in special cases.

(b) Except in Hawaii and Puerto Rico, or as otherwise approved by the Deputy Administrator in individual cases, eligible causes of loss for covered

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tropical crops will only include hurricanes, typhoons, and named tropical storms.

(c) Producers who have applied for coverage on covered tropical crops must maintain for the full coverage period contemporaneous records. Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed. In this regard:

(1) Producers may be selected on a random or targeted basis for compliance review with this requirement and any other requirements that may apply to this program.

(2) A failure to maintain acceptable contemporaneous records throughout the crop year may be treated by CCC as grounds of ineligibility for benefits under this part.

**§ 1437.504 Notice of loss for covered tropical crops.**

(a) The provisions of §1437.10(c) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to §1437.10, producers must provide records maintained according to §1437.503(c) of the:

(1) Number of acres or other basis of measurement, as applicable, of the crop from which production could be achieved existing on the day the eligible natural disaster occurred or, for prolonged natural disasters, such as a drought and similar damage where applicable, existing on the day the notice of loss is filed.

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop plantings (damaged or undamaged) which were in existence on the farm at the time of the disaster including production from the covered plantings (in existence at the time of the loss event) that may occur after the loss event even when, to the extent provided for in paragraph (c) of this section, the harvest occurs after the end of the crop year. Crop acreage of the covered crop that is in existence at the time of the loss event that can be harvested after the eligible natural disaster must be harvested, or continue to be harvested,

and the harvested acres and production reported to FSA according to this subpart, except that for perennial crops the requirement ends with the end of the crop year. For non-perennial crops the obligation to harvest ends with the end of the life-cycle for the plantings that were in existence at the time of the loss event. In this regard:

(i) Except as otherwise determined by FSA, such production, before or after the loss event, will be taken into account in computing eligibilities.

(ii) Production that must be reported under paragraph (b)(2)(i) of this section includes, except in the case of perennial plants, all production irrespective of whether the production occurs in the same crop year.

(iii) For perennial plants, only production in the same crop year must be reported.

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at the time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

(3) Failure to keep sufficient records to allow the computations provided for in this subpart is grounds for denial of the claim.

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

(1) Collective acres of the crop acreage planted or in the ground during the crop year.

(2) Total production harvested from the crop acreage for the full crop year in the case of a perennial plant and for the full life of the plants for other crops.

(d) With respect to the report required in paragraph (c) of this section:

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 calendar days from the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, an appropriate crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be destroyed until authorized by CCC.

**§ 1437.505 Application for payment for the tropical region.**

(a) For producers of covered tropical crops in Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the

Republic of Palau, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.10 and 1437.504.

(b) For producers in Puerto Rico and Hawaii, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.10 and 1437.502(i), and

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

**PART 1439—EMERGENCY LIVESTOCK ASSISTANCE**

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